THE LAND ACQUISITION ACT

WITH

THE LAND ACQUISITION (MINES) ACT

As Amended up to date

WITH INTRODUCTION, COMMENTARIES, ENGLISH RULINGS AND RULINGS OF THE SEVERAL HIGH COURTS AND CHIEF COURTS IN INDIA AND BURMA, RULES FRAMED BY THE LOCAL GOVERNMENTS, EXTRACTS FROM OTHER ENACTMENTS ON COMPULSORY ACQUISITION, MODEL FORMS OF PETITIONS & AGREEMENTS, &C., &C.

BY

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PREFACE

In the presence of so many learned treatises on the Law of Acquisition and Compensation in India the consideration that prompted me to take this work in hand was not so much to compile a learned treatise as to present to the members of my profession with a handy volume in a clear, attractive and practical form... In the following pages I have endeavoured to deal with each difficulty as it arises in the practical application of the law in India, and it will be for the members of the profession to judge how far I have succeeded.

In the compilation of this work I have consulted most of my predecessors, and have occasionally quoted from them where it appeared that quotations would more clearly convey the ideas. I take this opportunity of thankfully expressing my indebtedness to the learned authors.

Leaving out cases rendered out of date by the recent amendments, I have not consciously omitted any relevant Indian case-law up to January 1927 and have tried to include the leading English decisions as well. Though there is an aversion in some quarters to "unauthorised" Reports, to me they have been sources of great information.

I am indebted to my friend, Mr. Sudhindra Kumar Mitter, M.A., B.L., for the great assistance rendered by him at each step from beginning to end.

I shall feel myself amply rewarded if this book proves useful to those for whom it is intended.

CALCUTTA:
15th February, 1927. A. G.

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INTRODUCTION.

The sovereign power of every State has authority to appropriate for purposes of public utility lands situate within the limits of its jurisdiction. This power is termed in the United States "eminent domain". But it is not deemed politic to exercise the authority so as to interfere with security in the enjoyment of private property, or to confiscate private property for public purposes without paying the owner its fair value. It is a well recognised canon of construction not to interpret an Act of the Legislature in such a way as to take away property without compensation unless such intention is clearly expressed or is to be inferred by plain implication. It is in exercise of this sovereign power that private property is appropriated by the State for purposes of public utility and the appropriation by the sovereign power of private property for purposes of public utility is known in different countries by different names. In England the law which provides for the protection of private interests where it is required to appropriate lands for public purposes has acquired the name of the "Law of Compensation." The Law of Compensation there is contained in the Land Clauses Consolidation Act, 1845, the Land Clauses Consolidation (Amendment) Act, 1860, and the Land Clauses Consolidation Act, 1869.

The principle underlying appropriation by State of private property is that the appropriation must be for "public utility" or "public purpose" as it is called in India. It rests upon the famous maxim *Salus populi est suprema lex* which means that the welfare of the people, or of the public is the paramount law and also on the maxim *Necessitas publica major est quam privata* which means, "public necessity is greater than private." "The law imposeth it on every subject that he prefer the urjent service of his Prince and country before the safety of his life." And to interests of such paramount importance private interests may justly be subordinated. To check abuses, that is, to stop appropriation of private property for ulterior purposes, for purposes other than public utility, the above rules were made subject to the maxim *audi alteram partem,* that is, every subject has a right to be heard before he is deprived of his right to his property by the State.

Though the sovereign power has the right to appropriate for purposes of public utility lands situate within the limits of its jurisdiction, it is not deemed politic to *confiscate* private property for public purposes *without paying the ower its fair value.*

Hence the law of compensation is inseparably connected with the law of acquisition.

The laws of acquisition of land in every civilised country have been based on the fundamental principles stated above and machineries have been provided for carrying out and giving effect to the above principles. The law in India, until 1923, did not contain any provision for consulting the wishes of the people whose lands were compulsorily acquired, nor have they, even now, any authority to decide the question whether the purpose for which their lands are acquired is a public purpose. According to the law, as it is, there is no definition of a "public purpose" nor any limitation regarding what is likely to prove useful to the public—both matters being left to the sole and absolute discretion of the Government. It is not competent for any Court to assume to itself the jurisdiction to impose restrictions on this absolute discretion. The Government is the sole authority for deciding what a "public purpose" is and none has any jurisdiction to enquire into the question whether the purpose for which land, in respect of which a declaration has been made, is a public purpose or not.

The earliest codified law on the subject in India was Bengal Regulation I of 1824 which was in force till 1850, when it was repealed by Act I of 1850. The Act I of 1850 was again repealed by Act VI of 1857 which was in force till 1863 when Act XXII of 1863 was passed. In the year 1870, Act X of 1870 was passed repealing Act XXII of 1863, and Act X of 1870 was in force until the year 1894 when the present Act I of 1894 was passed. The law of acquisition is, in its main principles, contained in the Land Acquisition Act I of 1894 as amended by the Repealing and Amending Acts, X of 1914, XVII of 1919, XIX of 1921 and XXXVIII of 1923. All these Acts are to be construed as one Act

The preamble of the Land Acquisition Act, I of 1894, explains the reason which led to its enactment—"For the *acquisition* of land needed for public purposes and for Companies, and for *determining* the amount of compensation to be made on account of such acquisition." The word "acquisition" as used in the Land Acquisition Act includes the purpose for which the land is taken as well as the actual taking. The object and intention of the Land Acquisition Act, I of 1894, is to provide a speedy method of determining the compensation to be paid for land required for certain defined purposes and the Act points out the mode in which the same is to be acquired, and the formalities necessary to be followed for acquiring the same. The Act contains abundant evidence of the intention of the Legislature that all proceedings in regard to land acquisition and compensation should be conducted under the Act, and not otherwise.

What has to be acquired in every case is the aggregate of rights in the land and not merely some subsidiary right as that of a tenant. The Court must proceed on the assumption that it is the particular piece of land in question that has to be valued including *all interests in it.* Reading this Act as a whole one can come to no other conclusion than that it contemplated the award of compensation in this way: *first,* you ascertain the market-value of the land on the footing that all separate interests combine to sell, and then you apportion or distribute that sum among the various persons found to be interested.

With regard to the value of the land taken under Act I of 1894, and the enquiry directed by the Act, the duty of the Collector under the section relating thereto is to fix the sum which, in his best judgment, is the value. His proceedings are administrative and not judicial, and his award, though conclusive against Government, is subject to the land-owner's right to have the matter referred to the Court, whose jurisdiction in the matter is exclusive and cannot concurrently be exercised by the Civil Court. It should be remembered that exact valuation is practically impossible, the approximate market-value is all that can be arrived at. Compensation payable for land acquired by Government cannot be ascertained with mathematical accuracy and the Act provides only matters to be considered and neglected by Court in determining compensation.

No fixed principle has been or can be laid down regarding the apportionment of compensation allowed by Government. Every case must depend upon its own circumstances, on the evidence given and the nature of the property. The number of years' purchase which it would be right to allow with regard to one sort of property might not be a fair allowance for other sort of property. Where land which is taken under the Land Acquisition Act belongs to two or more persons the nature of whose interests therein differs, the compensation allotted therefor must be apportioned according to the value of the interest of each person having rights therein as far as such value can be ascertained. The determination of the question, who are the persons to whom the amount of compensation awarded for acquisition of land is payable depends upon the ascertainment of the rights and interests of the several claimants to the property at the time of its acquisition.

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As Amended up to date.

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THE

LAND ACQUISITION ACT, 1894.[1]

ACT I OF 1894.

(2nd February 1894).

An Act to amend the law for the acquisition of land for public purposes and for Companies.

[As modified up to the 31st December, 1926.]

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, extent and commencement.

1. *(1)* This Act may be called the Land Acquisition Act, 1894.

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1 For Statement of Objects and Reasons, *see* Gazette of India, 1892, Pt. V, p. 32; for Report of the Select Committee, *see ibid,* 1894, Pt. V, p. 23; and for Proceedings in Council, *see ibid,* 1892, Pt. VI, p. 25, and *ibid,* 1894, pp. 19, 24 to 42.

The Act has been declared in force in—

(*1*) Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s 4, Burma Code;

(*2*) Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3, B. and O. Code;

(*3*) Angul District by notification under s. 3 of the Angul Laws Regulation, 1913 (3 of 1913), B. and O. Code.

The Act has also been declared by notification under the Scheduled Districts Act, 1874 (14 of 1874), to be in force in (1) the Districts of

(2) It extends to the whole of British India; and

(3) It shall come into force on the first day of March, 1894.

NOTES.

The Law of Acquisition before 1894:—The principal enactments that were passed for enabling the officers of Government to obtain, at a fair valuation, land or other immoveable property required for roads, canals, and other public purposes were:—

(1) Bengal Regulation I of 1824.
(2) Act I of 1850.
(3) Act VI of 1857.
(4) Act XXII of 1863.
(5) Act X of 1870.

besides many other local enactments, e.g., (1) Act XXVIII of 1839 (Bombay); (2) Act XVII of 1850 (Bombay); Act XLII of 1850 (Bengal); Act XX of 1852 (Madras); Act I of 1854 (Madras).

Act I of 1894:—On the 17th March 1892, Bill No. 6 of 1892 was introduced in India Council to amend Act X of 1870. The following statement of Objects and Reasons will clearly show the reasons for which the Bill was introduced.

Objects and Reasons:—For several years passed the amendment of the Land Acquisition Act, 1870, has been under

Hazaribagh, Lohardaga (now called the Ranchi District—*see* Calcutta Gazette, 1899, Pt. I, p. 44) and Manbhum, and in Pargana Dhalbhum and the Kolhan in the District of Singhbhum—*see* Gazette of India, 1894, Pt. I, p. 400; and (2) the District of Palamau, *see* Gazette of India, 1894, Pt. I, p. 639.

It has been extended to British Baluchistan, by notification under s. 3 of the British Baluchistan Laws Regulation, 1913 (2 of 1913), *see* Bal. Code.

For directions by Financial Commissioner, Burma, under the Act, *see* Burma Gazette, 1907, Pt. IV, p. 827.

For modifications with which this Act applies in Calcutta, *see* the Calcutta Improvement Act, 1911 (Ben. Act 5 of 1911), s. 71 and sch., Ben. Code.

For modifications in this Act to make provision for the improvement and expansion of towns in the United Provinces, *see* the United Provinces Town Improvement Act, 1919 (U. P. Act 8 of 1919), s. 58 and sch.

For modifications in this Act to make provision for the improvement and expansion of the city of Rangoon, *see* the Rangoon Development Trust Act, 1920, s. 34 and sch. I (Bur. Act 5 of 1920).

consideration by the Government of India in communication with local Governments.

Act X of 1870:—"Before Act X of 1870, the valuation of lands, which was found necessary to take up for the execution of the public works, was entirely in the hands of arbitrators, from whose decision there was no appeal. This system led to a lamentable waste of the public money, both because the arbitrators were incompetent, and some times it is to be feared, corrupt and also because the law, as it then stood, laid down no instruction for their guidance in the performance of their duties. This latter defect among others was renewed by the Act of 1870 which it is now proposed to amend and which contains detailed instructions as to the matters which are to be considered and which are to be neglected in awards of compensation for lands acquired under its provisions. The Act of 1870 also provided for the abolition of the system under which uncontrolled discretion was entrusted to the arbitrators and in view thereof required the collector, when unable to come to terms with the persons interested in land which was desired to take up, to refer the difference for the decision of a Civil Court, usually that of the District Judge. In the disposal of such references the Court is aided by Assessors and its finding is final if the Judge and one or more of the Assessors agree. If, however, the Judge and the Assessors disagree, an appeal is allowed—which usually lies to the High Court."

3. "The Act of 1870 has not, in practice, been found entirely effective for the protection either of the persons interested in lands taken up or of the public purse. The requirement that the Collector shall refer for the decision of the Court every petty difference of opinion as to value, and any case in which any one perhaps of a large number of persons fails to attend before him, has involved in litigation, with all its trouble and delay and expense, a great number of persons whose interest in the land was extremely insignificant. It has, in fact, frequently been the case that the owners of small pieces of land have had to pay Court costs to an amount far exceeding the value of the land itself."

4. "On the other hand, the provisions of the Act as to the incidents of costs, the whole of which fall on the Collector if the final award is ever so little in excess of his tender, are such as to encourage extravagant and speculative claims. The chance of altogether escaping the payment of costs is so great, that claimants are in the position of risking very little to gain very much, and have, therefore, every motive to refuse even liberal offers made by the Collector, and to try their luck by compelling the reference to the Court. Much of the same may

be said of the provisions of the existing law regarding the payment of interest. No matter how fair the original offer of the Collector and how groundless the refusal to accept the compensation he has tendered, interest is payable on the amount of the award finally arrived at from the date of the Collector's taking possession of the land. This may not be for a period of two or three years, and, as interest continues to run until the litigation is finally completed it is to the advantage of the landowner to protract the proceedings to the utmost. All this costs a very heavy and undeserved burden on the public purse."

5. "It is proposed, therefore, to amend the law by making the Collector's award final, unless altered by the decree in a regular suit. Persons interested in land taken up for public works will thus still have the opportunity if they desire it, of referring to an authority quite independent of the Collector their claims to more substantial compensation than the Collector has awarded ; and will in all cases have a further right of appeal to the regular appellate Courts. They will no longer, however, be encouraged to litigate by the feeling that they can hardly lose but may make a great gain by doing so."

6. "This change in the procedure for determining the valuation of land taken up for Public Works will also render it possible to dispense with the services of the Assessors who are now supposed to assist the Courts. Considering the difficulty, almost throughout the country of obtaining the services of such Assessors as are really qualified to form a sound opinion on the subject of the valuation of land, it is believed that the proposal to dispense with them and to leave the matter to the sole arbitrament, first of the Collector and then of the Judge will in no way diminish the efficiency of the Court's enquiries in which the value of land is in issue. It will certainly tend to shorten litigation and to diminish expense."

7. "Several minor amendments in the law which experience has shown to be desirable are included in the Bill."

The Bill passed into Law :—The Bill was referred to a select committee who made their first report dated the 2nd February 1893 and a further (and final) report dated the 23rd March 1893, and a third report dated the 25th January 1894.

Repeal of Act X of 1870 :—Act X of 1870 was thereafter repealed by Act I of 1894, which received the assent of the Governor-General of India in Council and *came into force on the 1st day of March, 1894*.

For Statement of Objects and Reasons, see Gazette of India, 1892 Part V, p. 32 Appendix A and for report of the Select Committee See *Ibid*, 1894, Part V, p. 23 and for Proceedings in Council see *Ibid*, 1892, Part VI, p. 25, and *Ibid* 1894, pp. 19, 24-42.

Amendments of Act I of 1894 :—Various Amending Acts were passed from time to time to amend the provisions of Act I of 1894. The Amending Acts are (1) Act X of 1914 (2) Act XVII of 1919 (3) Act XXXVIII of 1920 (4) Act XIX of 1921 (5) Act XXXVIII of 1923. The amendments introduced by the above Acts are dealt with and discussed in the notes to the various sections amended.

Scope and Object of Act I of 1894 :—The Land Acquisition Act I of 1894, is of an exceptional character. It aims at promoting important public interests ; *Salus populi Suprema Lex*. And to interests of such paramount importance, private intertsts may justly be subordinated. And it has been recognised that in interpreting the intention of the Legislature in Statutes of that character, a construction necessary to effectuate that intention must be given effect to. *Shivaram Udaram* v. *Kondiha Muktaji*, 8 B. 340 ; *Sham Lal* v. *Mirachand*, 10 B. 367 ; *Balvant Ramchandra* v. *Secretary of State*, 29 B. 480.

The object and intention of the Land Acquisition Act I of 1894 is to provide a speedy method of determining the compensation to be paid for land required for certain defined purposes and the Act points out the mode in which the same is to be acquired, and the formalities necessary to be followed for acquiring the same. *Imdad Ali* v. *The Collector of Farakhabad*, I.L.R. 7 All. 817. The Act contains abundant evidence of the intention of the Legislature that all proceedings in regard to Land Acquisition and compensation should be conducted under the Act and not otherwise. *Nilmonee* v. *Rambundhoo*, 4 Cal. 757. It is an act authorising the Local Government to make compulsory acquisition of lands for public purposes and for companies and for determining the amount of compensation to be made on account of such acquisition. In making the acquisition the wishes of the owners were originally wholly irrelevant but has now been made relevant by Act XXXVIII of 1923. Though it did not originally contain any provision for any objection on the part of the owners to the acquisition itself the defect has been remedied by the Land Acquisition (Amendment) Act XXXVIII of 1923. At first all his objections were limited to the amount of compensation and matters connected therewith as was observed in *Ezra* v. *Secretary of State* in I. L. R. 30 C. 36, but by Act XXXVIII of 1923 any person interested in any land which has been notified under Sec. 4, Sub-sec. (1) as being needed for a public purpose or for a company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be, and further, provision has been made as to how

the said objection on the part of the owner has to be dealt with. Vide Sec. 5A (1), (2), (3) *infra*.

Its Extent :—Subject to the provisions of some Local Acts, Act I of 1894 as amended from time to time is the law of acquisition of land in British India, which is defined by Sec. 3 (7) of the General Clauses Act X of 1897 to mean all territories and places within His Majesties dominions which are for the time being governed by His Majesty through the Governor-General of India or through any Governor or other Officer subordinate to the Governor-General of India. And the Act has been declared to be in force in (1) Upper Burma (except Shan Estates) (2) Santhal Purganas (3) Angul District (4) The District of Hazaribagh, Ranchi, and Manbhum (5) Purgana Dhalbhum and the Kolhan in the District of Singhbhum (6) The District of Palamun (7) British Baluchistan (8) United Provinces, Tarai (9) Bangalore (10) Zanzibar.

Saving. **2.** * * * *[1]

(2) *[2] All proceedings commenced, officers appointed or authorized, agreements published and rules made under the [3][Land Acquisition Act, 1870[4]] shall, as far as may be, be deemed to have been respectively commenced, appointed or authorized, published and made under this Act.

(3) Any enactment or document referring to the [3][Land Acquisition Act, 1870][4] or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

NOTES.

By section 3 of the Repealing and Amending Act X of 1914 passed by the Governor-General of India in Council Sec. 2 (1) which ran as follows:--"The Land Acquisition Act of 1870 and Section 74 of the Punjab Courts Act, 1884, are

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1 Sub-section (*1*) of s. 2 was repealed by s 3 and sch. II of the Repealing and Amending Act, 1914 (10 of 1914), Genl. Acts, Vol. VIII

2 The word "But" was repealed by s. 3 and sch II of *ibid*.

3 These words and figures were substituted for the words "said Land Acquisition Act" by s. 2 and Sch. I of *ibid*.

4 Repealed by this Act.

hereby repealed," has been repealed, and Sections 2 (2) and (3) have been amended by Sec. 2 of the same Act in the form as given above.

Retrospective effect :—The Section provides that Act I of 1894 will, since the day it has come into force, have the effect of governing all proceedings commenced under Act X of 1870 and validates all proceedings, agreements and rules, etc., made and published under Act X of 1870 as if made under Act I of 1894. *Boloram Bhramartar Ray* v. *Shamsunder*, I.L.R. 23 Cal. 526 ; *Nobin Chandra* v. *Deputy Commissioner of Sylhet*, 1 C.W.N. 562 ; *Vasyed Savai* v. *Tasildar of Periakulum*, 6 Mad. L.J. 122.

Sub-section (3) provides that the words "The Land Acquisition Act, 1894," shall be substituted in place of the words "The Land Acquisition Act, 1870," wherever and whenever they occur in any enactment or document, the Land Acquisition Act, 1870 having been repealed by Act I of 1894.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(*a*) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth :

(*b*) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land :

(*c*) the expression "Collector" means the Collector of a district, and includes a

Deputy Commissioner and any [5]officer specially appointed by the Local Government to perform the functions of a Collector under this Act:

(*d*) the expression "Court" means a principal Civil Court of original jurisdiction, unless the Local Government has [6]appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act:

(*e*) the expression "Company" means a Company registered under the Indian Companies Act, 1882,[1] or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament or of the Governor-General in Council, or by Royal Charter or Letters Patent [2][and includes a society registered under the Societies Registration Act, 1860,[3] and a registered

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5 For officers specially appointed under clause (*c*) in—
(1) Ajmer-Merwara, *see* Gazette of India, 1902, Pt. II, p. 1081;
(2) Assam, *see* Assam Local Rules and Orders;
(3) Bombay, *see* Bombay Local Rules and Orders;
(4) Burma, *see* Burma Rules Manual.

6 For instances of such appointments, *see* Madras Local Rules and Orders; Bombay Local Rules and Orders; Coorg Local Rules and Orders; U. P. Local Rules and Orders.

For notification appointing the District Judge of Mirzapur for the family Domains of the Maharaja of Benares in the Mirzapur and Benares district, *see* U. P. Gazette, 1907, Pt. I, p. 725

1 *See* now Act 7 of 1913, General Acts, Vol. VII.

2 These words and figures were added by s. 2 of the Land Acquisition (Amendment) Act, 1919 (17 of 1919).

3 General Acts, Vol. I.

society within the meaning of the Co-operative Societies Act, 1912][4]:

(*f*) the expression "public purpose" includes the provision of village-sites in districts in which the Local Government shall have declared by notification[5] in the official Gazette that it is customary for the Government to make such provision: and

(*g*) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability:

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively

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4 General Acts, Vol. VII.

5 For instances of such notifications, *see* Burma Rules Manual; *see* also Burma Gazette, 1899, Pt. I, p. 297, Bombay Local Rules and Orders and Coorg Local Rules and Orders.

the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted:

Provided that—

(*i*) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(*ii*) in every such case the person interested may appear by a next friend, or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;

(*iii*) the provisions of Chapter XXXI of the Code of Civil Procedure[1] shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

(*iv*) no person "entitled to act" shall be competent to receive the compensation-money payable to the person for whom he is entitled to act, unless he

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[1] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908), Genl. Acts, Vol. VI.

would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

NOTES.

Land :—The word "land" is used in the same sense as immoveable property, vide sec. 3 (25) of the General Clauses Act X of 1897. See also the definition of "immoveable property" in Sec. 3 of the Registration Act III of 1877, and also Sec. 3 of the Transfer of Property Act IV of 1882, which does not include "standing timber, growing crops or grass." It follows, therefore, that for the purposes of acquisition under the Land Acquisition Act, standing timber, growing crops or anything rooted in the earth as in the case of trees and shrubs or anything imbeded in the earth as in the case of walls and buildings or attached to anything so imbedded for the permanent beneficial enjoyment of that to which it is attached, cannot be *excluded* from being taken into consideration though under the Transfer of Property Act and the Registration Act they are not to be considered as included within the term "land" for the purposes of transfer and registration.

Land includes Mines :—Lands are the subject matter of the Law of compensation. Mines according to English law are included under "land" and if required may be purchased in the first instance either by agreement or compulsorily. *Holliday* v. *Mayor of Wakefield* (1891) A.C. 81 ; *Smith* v. *Great Western Railway Co.* (1887) 3 App. Cas. 165 ; *Errington* v. *Metropolitan District Rail Co.* (1882) 19 Ch. D. 559. Section 3 of the Lands Clauses Act, 1855, defines lands as "messuages, lands, tenements, and hereditaments of any tenure". The term "messuages" is substantially equivalent to a house. Tenement is a large word used to pass not only lands and other inheritances which are holden, but also offices, rents, commons, *profits a prendre* out of lands and the like, wherein a man hath any possible tenement and whereof he is seised"—"ut de libro tenemento." But hereditament is the largest of all in that kind, for whatsoever may be inherited is an hereditament, be it corporeal or incorporeal, real or personal, or mixt.". And Blackstone in his Commentaries (V. 2 p. 16) says that "Incorporeal hereditaments are principally of ten sorts—advowsons, tithes, commons, ways, offices, dignities franchises, corrodies or pensions, annuities and rents," *In re Brewer* (1876) 1 Ch. D. 409. And so far as the definition clause is concerned, lands, as they are defined, include easements, *Great Western Railway Co.* v. *Swindon Rail*

Co. (1884) 9 App. Cas. 787 ; *In Re Metropolitan District Company and Cosh* (1880) 13 Ch. D. 607. Vide L. A. (Mines) Act XVIII of 1885 infra.

The Definition of Land is not exhaustive :—When in an interpretation clause, it is stated that a certain term "includes" so and so, the meaning is that the term retains its ordinary meaning and the clause enlarges the meaning of the term and makes it include matters which the ordinary meaning would not include. *The Official Assignee Bombay* v. *Firm of Chandulal Chimanlal,* 76 Ind. Cas. 657. The definition of the word "land" given in the Act is not exhaustive. The use of the inclusive verb "includes" shows that the Legislature intended to lump together in one single impression, viz "land" several things or particulars, such as the soil, the buildings on it, any charges on it, and other interests in it which all have a separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act may require. *In the Matter of Nasibun,* 8 C. 534 ; *Government of Bombay* v. *Esufally Salebhoy,* 34 B. 618 : 12 Bom. L. R. 34 : 5 I.C. 621. Though the term "land" in Sec. 3 (a) of the Act is defined as including things attached to the earth, the Act does not contemplate the acquisition of things attached to the land *without the land itself. It is only the land including the rights which arise out of it and not merely some subsidiary right which is capable of acquisition under the Act. Dasarath Sahu* v. *Secy. of State for India,* 35 I.C. 97. The taking of property which merely injures a franchise but does not interfere with the exercise of it, does not entitle the owner of the franchise to compensation for damages to the franchise. The mere construction of a railway bridge across a river whereby the profits of the *ferry* are reduced, does not entitle the owner of the ferry to claim damages. Where, however lands on both banks of a river which were used as landing places for the ferry were acquired for the purpose of a railway bridge, the access to the river and with it the exercise of the franchise was destroyed and the owner in consequence was entitled to compensation. *Maharaja Sir Rameswar Singh* v. *Secretary of State,* 34 Cal. 420 : 11 C.W.N. 356 : 5 C.L.J. 669 ; *Collector of Dinajpur* v. *Girija Nath Roy,* 25 C. 346. It is only land including the rights arising out of it, but not rights *detached* from the land that can be acquired under the Act. The incorporeal rights *detached* from the land out of which they arose were not subjects for acquisition under the Land Acquisition Act. *Fishery* rights are not land within the meaning of the Act. *Babujan* v. *Secretary of State,* 4 C.L.J. 256 ; and *Raja Shyam Chunder* v. *Secretary of State,* 35 Cal. 525 : 12 C.W.N. 569 : 7 C.L.J. 445.

Easements:—The Lands Clauses Act, 1845, Section 68, gives full compensation to the owner for interference with an existing easement, such interference being an injury to the dominant tenement, *Thicknesse* v. *Lancaster Canal Co.*, 4 M. & W. 472. The Land Acquisition Act I of 1894 includes easements or similar rights under the definition of lands and authorises the Government of purchasing or taking easements compulsorily. When an existing easement is interfered with in the execution of works authorised under compulsory powers, the owner should in all cases claim compensation for injury to the dominant tenement ; *Clark* v. *School Board for London* (1874) L.R., 9 Ch. 120 ; *Badham* v. *Marris* (1882) 52 L.J. Ch. 237 ; *Swainston* v. *Firm and Metropolitan Board of Works* (1883) 52 L.J. Ch. 235 : 31 W.R. 498. Land taken under the Act is taken discharged of all easements and the loss of easement must be taken into account in assessing compensation for injurious affection. *Taylor* v. *Collector of Purnea*, 14 C. 423, following *Raja Nilmony Sing Deo* v. *Rambandhu Rai*, 7 Cal. 388 (P.C.). The word "incumbrance" in Sec. 16 includes easements. Where therefore, land is acquired by Government under the provisions of the L. A. Act, the land vests absolutely in the Government free from all existing easements ; *Mitra* v. *Municipal Committee, Lahore*, 6 L. 329 : 89 I.C. 658 (1925) A.I.R. (L) 523.

Land includes Trees :—Trees are things attached to the earth and are thus included in the definition of "land" in Section 3 (a) of the L. A. Act ; and this definition must be applied in the construction of Section 28 of the Act. The value of such trees as are on the land, when the declaration is made, under section 6 is included in the market value of the land on which the allowance of 15 per cent is to be calculated under section 23 (2) of the L. A. Act, *Sub-Collector, Godavari* v. *Seragam Subbarayadu*, 30 M. 151 ; *The Collector of Bareilly* v. *Sultan Ahmad Khan*, 24 A.L.J. 583. Fruit-bearing trees likely to bear fruit for a number of years e.g., mangoe trees, should also be valued at 20 years annual rental, *Rajammal* v. *Head Quarter Deputy Collector, Vellore*, 25 Ind. Cas. 393. But where a person whose land was acquired under the L. A. Act asked the same to be valued as vacant land to be used for the purpose of erecting buildings, he could not at the same time claim the value of the trees on it on the footing that they would still remain there, the claims being inconsistent. The proper value of the trees would be their value as timber after they have been cut down. *Secretary of State* v. *Duma Lal Shaw*, 13 C.W.N. 487. In the case of cocoanut topes it was thought reasonable to fix the market value at ten years' purchase on the average income of the yielding trees plus the value of the timber of the

non-yielding trees. *Shunmuga Velayuda Mudalier* v. *Collector of Tanjore*, 23 M.L.W. 336: (1926) M.W.N. 235: (1926) A.I.R. (M) 945.

Land covered with water —Land is not the less land for being covered with water. *Reg.* v. *Leeds and Liverpool Canal Co.*, 7 A. E. 685. A pond or piece of water is land covered with water. Land, according to the L. A. Act, does not mean merely firm land but also land covered with water, and in estimating the market value of such land, the benefit derived from such water should also be taken into account. *Nalinaksha Bose* v. *Secretary of State*, 5 C.L.J. 62n.

Can interests in Land be separately valued :—What has to be acquired in every case under the L. A. Act is the aggregate of rights in the land and not merely some subsidiary right such as that of a tenant. *Babujan* v. *Secretary of State*, 4 C.L.J. 343. In *Collector of Belgaum* v. *Bhimroo* (1908) 10 Bom. L.R. 657, Jenkins, C. J. said that "for the purpose of ascertaining the market value of land the Court must proceed upon the assumption that it is the particular piece of land in question that has to be valued *including all interests in it.*" Bachelor J. also observed in *Bombay Improvement Trust* v. *Jalbhoy*, 33 B. 483 (495) "reading the Act as a whole I can come to no other conclusion than that it contemplates the award of compensation in this way: first you ascertain the market value of the land on the footing *that all separate interests combine to sell* ; and then you apportion or distribute that sum among the various persons found to be interested." The antethesis between "land" and "an interest in land" is well marked in section 31 (3). The distinction is preserved throughout the Act where "land" is always used to denote the physical object, which is after all the thing that has to be acquired. Provision is made for compensation to all persons interested, but claims on this head are to be adjusted in the apportionment prescribed under Section 29 & 30 and do not fall to be considered till after the Court has determined the market value of the land under Section 23 (1). The value of the land cannot and ought not to be determined independently of the huts. *Secretary of State* v. *Belchambers*, 3 C.L.J. 169. Where there is one holding, there cannot be piecemeal acquisition, as the L. A. Act refers only to one notice, one proceeding and one award to be given and made regarding one holding and one ownership, *R. C. Sen* v. *The Trustees for the Improvement of Calcutta*, 48 C. 893: 33 C L.J. 509: 64 I.C. 577.

Effect of Acquisition of Land :—To acquire a land is not necessarily the same thing as to purchase the right of fee-simple to it, but means the purchase of such interests as clog

the right of Government to use it for any purpose they like. *Government of Bombay* v. *Esufali*, 34 B. 618. It follows, therefore, that lands when acquired, according to the provisions of the Land Acquisition Act, I of 1894, vest in the Government, and afterwards in the Company for whom the same have been acquired *free from all encumbrances.* In *Collector of 24 Pergannas* v. *Nobin Chandra Ghose*, 3 W.R. 27, the line of the South-Eastern Railway passed through the plaintiff's mouza, severed about 1200 Bighas of land from the remaining portion of the Mouza which lay on the South side of the line. The ryots of the land so severed, lived on the Southern side of the Railroad and before the making of the line they had access by a road from their dwelling house to the land cultivated by them. A suit was brought to procure the removal of obstruction caused by the Railway Company and to establish the *right of way* of the Plaintiff and his ryots to a road across the railway. Held, that the Railway company, with the aid of Government acquired the land under the provisions of the Land Acquisition Act (VI of 1857, then in force) and the land taken became vested in the Government and afterwards in the Railway Company *absolutely and free from every right or interest therein,* of whatever description, possessed by the former proprietors or other persons. All rights before existing whether of passage or of any other kind absolutely *ceased* upon the acquisition of the land for the railway and no right of way afterwards arose or was continued merely because there remained no mode of access to the land on the North, otherwise than by crossing the line. The express provisions of the law are not consistent with the existence of such a right. *Municipal Commissioners, City of Bombay* v. *M. Damodar Bros.*, 45 B. 725 : 23 Bom. L.R. 35 : 60 I.C. 571.

Crown Lands :—The scope and object of the Land Acquisition Act, as has been observed, were to provide a speedy method for deciding the amount of compensation payable by the Collector, when such amount is disputed and the person or persons to whom it is payable. The special jurisdiction either of the Collector or the Court was never intended to be extended to a case in which the Collector claims the land on behalf of the Government or the Municipality and denies the title of other claimants to the land. Such a position would be inconsistent with the applicability of the Act, for it denies the right of any person to compensation. It seems a contradiction in terms to speak of the Collector, as seeking acquisition of land when he asserts that the land is his own, and that no other person has any interest in it. *Imdad Ali Khan* v. *The Collector of Farakhabad*, 7 All. 817. As has been noted, to acquire a land is not necessarily the same thing as to purchase the right of fee-simple to it, but means the purchase of such interests as

clog the right of Government to use it for any purpose they like. The definition given to the word "land" in section 3 (a) of the Act as has been observed, is not exhaustive. The use of the inclusive verb "includes" shows that the Legislature intended to lump together in one single expression—viz: "land" several things or particulars such as the soil, the buildings on it, any charges on it and other interest in it, all of which have a separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act may require. Government are therefore not debarred from acquiring and paying for the only outstanding interest merely because the Act, which primarily contemplates all interests as held outside Government, directs that the entire compensation based upon the market value of the whole land must be distributed among the claimants. In such circumstances there is no insuperable objection to adopting the procedure to the case on the footing that the outstanding interests which are the only things to be acquired are the only things to be paid for. *The Government of Bombay* v. *Esufali Salebhoy*, 34 B. 618: 12 Bom. L.R. 34: 5 I.C. 621. Under the L. A. Act what is acquired is the land which includes all that is stated in cl. (a) Section 3 of the Land Acquisition Act. But in the case of any land with superstructure thereon, in which either the Government have an admitted interest or wherein that interest is a matter of dispute between a claimant interested in the property and the Government, it is open to the Government to acquire the property under the Act. When it comes to a question of determining the market value of the property acquired and the sum payable as compensation for the property acquired to the person having a limited interest in the property it is open to the Court to determine what sum is really payable to the limited owner. The question of title in such proceedings is really incidental to the question of the determination of the market value of the interests of the claimant in the land acquired. *Mongaldas Girdhardas Parekh* v. *The Assistant Collector of Prantij Prant, Ahmedabad*, 45 B. 277: 23 Bom. L.R. 148: 64 I.C. 584; *Government of Bombay* v. *N. H. Moss*, 47 B. 218: 27 Bom. L.R. 1237: (1926) A.I.R. (B) 47. The Land Acquisition Act does not contemplate or provide for the acquisition of any interest which already belongs to Government in land which is being acquired under the Act, but only for the acquisition of such interest in the land as do not already belong to the Government. When Government claiming to be the owner of the land seeks to acquire under the Act, the interests of other persons therein, and such persons deny the title of the Government and set out that they themselves are the owners and claim compensation on that basis,

the Collector should determine for the purpose of fixing the compensation to be paid to them whether they are owners as they claim to be, or are entitled to the limited interest admitted by Government to belong to them. The word "claimant" as used in the L. A. Act means a claimant to compensation, and Government is not a claimant, as it does not in proceedings under the Act, claim compensation, *Deputy Collector, Calicut* v. *Aiyavu Pekoi*, 9 M.L.T. 275: 9 Ind. Cas. 341. When the Government or a Municipality or other local authority for whose ultimate benefit the land is being acquired, claims to be the full owner and no other person has any sort of right in the land, there is nothing to be acquired. But *where the claim of the Municipality or other local authority is to a restricted right, there is nothing in the Act to prevent the Government from acquiring the land and then dealing* with it in any manner it chooses. It is the Government that obtains the title by acquisition and neither a tenant under the Municipaliy nor the Court has any concern with the arrangements between the Government and the Municipality after the acquisition of the land. There is nothing to limit the scope of the Act, so as to exclude from its operation all cases in which a Municipality or other local authority, for whose ultimate benefit the Government may wish to take action, happens to have some interest in the land to be acquired. *Babujan* v. *Secretary of State and the Chairman, Gaya Municipality*, 4 C.L.J. 256.

Lands exempted from the operation of the Act:—In *Municipal Corporation of the City of Bombay* v. *Great Indian Peninsular Railway Co.*, 41 B. 291: 19 Bom. L.R. 48: 21 C.W.N. 447: 38 I.C. 923: 25 C.L.J. 209 (P.C.) the point for decision of the Judicial Committee of the Privy Council was whether the Railway Company had the right to construct lines of railway across a street vested by Statute in the Municipal Corporation without obtaining their consent and without taking proceeding under the Land Acquisition Act, held, that the provisions of the Land Acquisition Act do not cut down the power conferred by Section 7 of the Indian Railways Act as amended by Section 1 of Act IX of 1896, on a railway company to carry a line of railways across a street subject to the control of their powers by the Governor-General in Council and that the constructions of the railway line across the street was not an acquisition of immoveable property within the meaning of the said section 7 and that the respondents had power under that section to lay the lines without obtaining the consent of the corporation. The Statutory authority under Section 7 of the Indian Railways Act was established and that the application of Section 293 of the City of Bombay Municipal Act or any other enactment was excluded by the words "notwithstanding

anything in any other enactment for the time being in force." Therefore, when a Railway company wished to lay a Railway upon and across a street it was neither necessary or appropriate to proceed under the Land Acquisition Act for the acquisition of the land, *G. I. P. Railway Co.*, v. *Municipal Corporation of the City of Bombay* 38 B 565.

(b) PERSON INTERESTED.

It has been seen before that the Legislature intended to lump together in one single impression, *viz.*, "land" several things or particulars, such as the soil, the buildings on it, any charges on it, and other interests in it which all have a separate existence and are capable of being dealt with in a mass or separately as the exigencies arising under the Act may require. *Government of Bombay* v. *Esufally Salebhoy*, 34 B. 618: 12 Bom. L.R. 34: 5 I.C. 621. It should also be borne in mind that it is only land including the rights arising out of it, but not rights detached from the land that can be acquired under the Act. It follows, therefore, that "person interested" means either the person in whom is vested the *lump* of several things or particulars, such as the soil, the buildings on it, the charges on it, and other interests in it which constitute the word "land," or the person or persons in whom is vested each of the several things or particulars, which have a separate existence and are capable of being dealt with separately. Under section 11 of the L.A. Act, the Collector has to enquire into the value of the land and into the respective interests of the persons claiming the compensation and after awarding a sum for compensation, has to apportion the said compensation among all the persons known or believed to be interested in the land of whom or of whose claim he has information. Under section 3 the expression "persons interested" includes all person claiming an interest in compensation to be made on account of the acquisition of land under the Act. It is quite possible that a person may be interested in the compensation money without having an interest in the land in the legal sense of the term. The Act does not indicate how the collector is to effect the apportionment and sections 20 and 28 which deal with the proceedings of the Court when a reference has been made under Sec. 18, are also silent on the point. The definition shows that the "persons interested" are not confined to persons whose title to share in the amount awarded has been admitted. *Husaini Begum* v. *Husaini Begum*, 17 All. 373.

Hindu widows :—It is not correct that in apportionment the market value of each interest is to be ascertained. The various rights of the female members of a Hindu undivided

family in the joint family property have no market value though such members would be interested in the compensation money. What the collector and the Court have to do is to apportion the sum awarded amongst the persons interested as far as possible in proportion to the value of their interests. *In re the L. A. Act, in the matter of Pestonjee Jahangir,* 37 B. 76: 14 Bom. L. R. 507: 15 I. C. 771. Where land which is taken up by the Government under the L.A. Act belongs to two or more persons, the nature of whose interest therein differs, the compensation allotted therefor must be apportioned according to the value of the interest of each person having rights therein so far as such value can be ascertained. *Hirdey Narain* v. *Mrs. Powell,* 35 A. 9: 10 A.L.J. 403.

Interest by user and occupation :—Two villages were granted to certain persons under a perpetual lease. Certain Bhati lands (waste lands producing grass) in the said villages were acquired under the L. A Act I of 1894. The lessees claimed the whole of the compensation but the villagers claimed that they had acquired a substantial interest in the Bhati lands by long and continued user thereof adversely to the lessees. The evidence showed that the Bhati lands had been enclosed, that they had been sold by registered sale deeds, that they had been passed from hand to hand under these sale deeds and that the lessees were perfectly aware that the villagers were thus dealing with them ; held that the villagers had acquired by this action an interest in the Bhati lands and were therefore entitled to compensation, *Vasudev Bhaskar* v. *Collector of Thana,* P.J. 274 ; *Harish Chandra* v. *Sorabji,* P J. 9 and 444 ; *Vallabhdas Narayanji* v. *Special L.A. Officer for Railways,* 46 B. 272: 23 Bom. L.R. 1288: 85 I.C. 427: (1922) A.I R. (B) 365. On the acquisition of a piece of land under the L.A. Act it was found that the person in possession had taken possession of it on the death of the last male owner and held possession without payment of rent for more than twelve years. He asserted that he held the land under another person and not under the rival claimant who was the reversionary heir of the last male owner. Held that the person in such possession was entitled to the full compensation paid for compulsory acquisition, having acquired the right to hold the land rent-free by twelve years adverse possession. *Biswanath* v. *Brojo Mohon,* 10 W.R. 61 ; *Rajbans Sahay* v. *Roy Mohabir Prosad,* 20 C.W.N. 828: 1 P.L.J. 258: 37 I.C. 464. A sub-tenant who was given a right to construct a pucca building in the land, whose interest is not transferable except with the sanction of his superior landlord, has an interest which entitles him to be heard upon the question of adequacy of compensation awarded by the collector under the L.A. Act. *Godadhar* v. *Dhanput,* 7 C. 585 ; *Jagadiswar Sannyal*

v. *Collector of Goalpara,* 39 C.L.J. 574 : 84 I.C. 4. When land is taken for public purposes, the party *prima facie* entitled to compensation is the proprietor. Any party claiming the same as against the proprietor in virtue of a right created by the latter, e.g. as a Makurraridar is bound to prove the title he pleads. *Issur Chunder* v. *Suttyo Dyal,* 12 W.R. 270. When land held in *Putni* is taken for public purposes the putnidar is entitled to the compensation money for the loss he has suffered. *Raye Kissori* v. *Nilcanta,* 20 W.R. 370. The compensation is to be apportioned between the parties according to the value of the interest which each of them parts with. *Satis Chunder* v. *Rai Jatindra Nath,* 7 C.L.J. 284.

Owner :—The word "owner" is not defined in the Act, but an owner must be deemed to be one of the persons interested in the land to be acquired. Reading Sec. 10 of the Act, a proprietor, sub-proprietor, mortgagee, tenant or sub-tenant are all owners for the purpose of Sec. 49 *Krishna Das* v. *Collector of Pabna,* 16 C.L.J. 165 : 16 C.W.N. 327 : 13 I.C. 470.

Ghatwalli Tenure :—In a suit by a ghatwal to recover compensation money for land appertaining to a ghatwalli Taluk which was taken for public proposes the defendants who claimed to participate in the compensation were the Zemindars and the representatives of a sub-tenant in the Ghatwalli Mahuls ; held that as the Zemindar had sustained no loss but continued to receive from Government under Reg XXIX of 1814 Sec. 4, the same profits as they had hitherto been enjoying, they are not entitled to any compensation. That the sub-tenant had not any valid title to any portion of the land taken but was allowed to remain in possession by the mere sufferance of the Ghatwal, he was not entitled to any compensation, that the Plaintiff being a Ghatwal and not absolute owner was entitled only to the interest of the compensation money which was kept in tact as a part of the Ghatwalli property. *Ram Chunder* v. *Rajeh Mahomed,* 23 W.R. 376.

Government as "person interested" :—In an enquiry before the Collector in the case of acquisition of land with buildings thereon the Government put forward their claim to the land as owners and averred that as the claimant held it as a tenant by mere sufferance he was entitled to compensation in respect of the building only ; held, that in such a case the Collector has jurisdiction to go into and determine the question of title for the purpose of enquiry before him, that the L. A. Act applies to lands of which the Government are or claim to be owners. *Government of Bombay* v. *Esuf Ali Salibhoy,* 12 Bom. L.R. 34 : 5 I.C. 621 ; *Deputy Collector, Calicut* v. *Aiyavu Pillai,* 9 M.L.T. 275 : 9 Ind. Cas. 341 ; *Bejoy Kumar Addy* v. *Secretary of State,* 25 C.L.J. 476 : 39 I.C. 889. But it has been

pointed out in *B. I. S. N. Co.* v. *Secretary of State for India,* 38 C. 230 that the expression any "person interested" in Section 18 does not include the Secretary of State for India in Council. When Government has no proprietory interest in the land to be acquired but has only a right to levy assessment, the land can be notified for acquisition. *N. H. Moss* v. *The Govt. of Bombay,* 27 Bom. L.R. 1237: (1926) A.I.R. (B) 47.

Zemindar, Patnidar and Darpatnidar :—The Zemindar, Patnidar and Darpatnidars are all persons interested, *Nabodwip Chunder* v. *Brojendra Lal Roy,* 7 Cal. 406 ; *Gadadhar Das* v. *Dhanput Singh,* 7 Cal. 585 ; *Ganpat Sing* v. *Motichand,* 18 C.W.N. 103.

Lessee holding over is a "person interested" :—A plot of land was acquired under the L. A. Act within the town of Calcutta. The tenants who had erected masonry buildings on portions of the land and who were in possession at the time of acquisition, claimed before the Collector the value of their interests ; but the owner of the land claiming the whole of compensation money, the matter was referred to the Civil Court which held that the tenants were entitled to the value of the buildings. On appeal, the High Court held, that the lower Court came to a right finding on the facts and that the owner of the land was not entitled to the buildings erected by the tenants without being liable to pay them compensation even if the tenancy had come to an end, *Juggut Mohinee Dassee* v. *Dwarka Nath Bysack,* 8 C. 852 ; *Dunia Lal Seal* v. *Gopi Nath Khettry,* 22 C. 820.

Mourasi Mokurari Tenure-Holder :—A person claimed to hold a Mourasi Mokurari title to certain land which was acquired unter the L. A. Act but could produce no potta or evidence of title other than certain rent receipts which showed that he and his predecessor in title had held the land in question for nearly 100 years at a fixed rent, the nature of the tenure not being mentioned in such receipts ; held that the presumption was in the absence of any evidence to the contrary that the claimant had a permanent and transferable interest in the tenure and not merely an interest in the nature of a tenancy at will. *A. M. Dunne* v. *Nabo Krishna Mukherjee,* 17 Cal. 144.

Mirasidars :—Certain lands which had been waste from time immemorial were taken up by Government and compensation awarded. Claims were made by the Mirasidar for the amount so awarded, held, that the rights of the Mirasidar over immemorial waste appear to be confined to grazing, cutting firewood and similar common privileges as stated in *Sakkaji Rau* v. *Latchmana Gaundan,* 2 Mad. 149. But those rights were

liable to be extinguished by Government alienating the land. *Sivanatha Naicken* v. *Nathu Rangachari,* 26 Mad. 371.

Tenants-at-Will —If it is found in evidence that the tenants were tenants-at-will having no transferable interest in the land, but their interest in the land was frequently sold and substantial prices were paid by the purchasers, held, that the sub-tenant had an interest in land which had a market value as such. *Girish Chandra Roy Choudhury* v. *Secretary of State,* 24 C.W.N. 184 ; *Sadhu Charan Ray Choudhury* v. *Secretary of State,* 36 C.L.J. 63 ; *Secretary of State* v. *Belchambers,* 33 C. 396 : 10 C.W.N. 289 : 3 C.L.J. 169.

Intending Purchaser:—In *J. C. Galstaun* v. *Secretary of State for India in Council,* 10 C.W.N. 195, it was held that an intending purchaser who enters into a contract to purchase the land acquired after award is a person interested. The High Court observed "That no question of apportionment having arisen, the question whether the intending purchaser had an interest such as would entitle him to any portion of the compensation money was a matter foreign to the proceeding at that stage. The fact that the intending purchaser had *claimed* an interest in the compensation-money and the collector thought that he was a person who could come in as claiming an interest was sufficient to entitle him to ask for a reference and to appear in support of it." *Nabin Chandra Sah* v. *Kristo Borani Dassi,* 15 C.W.N. 420. A person who has entered into a valid agree ment for the purchase of land is a person interested within the meaning of Sec. 3 (b) of the L. A. Act ; *Chuttan Lal* v. *Mulchand,* 18 P.R. 1917 : 37 I.C. 822.

Attaching Creditor:—is a person interested, *Golap Khan* v. *Bhola Nath,* 7 I.C. 481 ; *Siva Pratapa* v. *A. E. L. Mission,* (1926) A.I.R. (M.) 307 : 97 I.C. 496.

Occupancy and Non-occupancy Raiyats in Bengal are persons interested. *R. Mitter* v. *Anukul Chandra Mukherjee,* 2 C.L.J. 8. A tenant or sub-tenant even though his interest is not transferable except with the sanction of the superior landlord, has an interest which entitles him to be heard upon the question of adequacy of compensation *Jagadishwar* v. *Collector of Goalpara,* 39 C.L.J. 574 : (1925) A.I.R. (C.) 197. A Raiyat or under-Raiyat in Bengal is a person interested, *Jagat Chunder* v. *Collector of Chittagong,* 17 C.W.N. 1001. A yearly tenant of a tank is a "person interested." *Narain Chunder Boral* v. *Secretary of State,* 28 C. 152 : 5 C.W.N. 349.

Mortgagee:—is a person interested. *Prokash Chunder Ghosh* v. *Hasan Banu Bibee,* 42 Cal. 1146 ; *Basamal* v. *Tazammal Hossien,* 16 All. 78 ; *Jotoni Choudhurani* v. *Amar Krishna,*

13 C.W.N. 350 : 6 C.L.J. 745 ; *Gojendra Sahu v. Secretary of State*, 8 C.L.J. 39.

Purchaser at a Revenue Sale :—A purchaser at a revenue-sale was entitled to be made a party to the proceedings. *Promotha Nath Mitter* v. *Rakhal Das Addy*, 11 C.L.J. 420.

A Ryot in Madras :—A Ryot in occupation of "ryoti lands" on the date the Estates Land Act came into operation, can claim compensation in respect of the occupancy right conferred upon him by section 6 (1) of the Act when the land is acquired by Government under the L. A. Act. A *Muchileka* executed by a tenant prior to Madras Estate Land Act, relinquishing his claim for compensation, does not estop him from making the claim in view of the right conferred by the Etates Act. *Hotha Virabhadrayya* v. *Revenue Divisional Officer*, 29 Ind. Cas. 8 ; *Raja of Pittapuram* v. *Revenue Divisional Officer, Coconada*, 36 M.L.J. 455 : 42 M. 644 : 51 I.C. 656.

Who are persons not interested :—Lord Hobhouse in delivering the judgment of the Privy Council in *Secretary of State* v. *Shanmugaraya Moodaliar*, 16 M. 369 : L.R. 20 I.A. 80, held that no compensation is tendered by the collector or ordered by the Act except to *persons interested in the land*. If the acquisition injuriously affects the earnings of the person interested, he is to obtain further compensation beyond the market value of the land. But no compensation is given to persons *not interested in the land* on the ground that their earnings may be affected by the change of ownership or indeed on any ground. The quarrymen are no more interested in the land than a ploughman or a digger is interested in the land on which he works for wages. Nor are their earnings the earnings of the Zamindar, who is interested. The market-value of a property is not increased by the circumstance that a number of persons work on it and so earn their livelihood. That is no profit to the owner ; it may be expense to him."

Easement affecting the Land :—A person shall be deemed to be interested in land if he is interested in an easement affecting the land The definition in Act X of 1870 of a person interested was "The expression person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act" The clause "and a person shall be deemed to be interested if he is interested in an easement affecting the land" has been added to the definition of "person interested" in Act X of 1870" in order to prevent any doubt as to the right to compensation of persons who own easements affecting lands taken up under Act I of 1894," thus making the definition expressly

cover such persons. *Vide also notes under section 3 Cl. (a) and under section 16.*

Persons :—"Person" shall include any company or association or body of individuals whether incorporated or not. Sec. 3 (39) of the General Clauses Act X of 1897.

(c) COLLECTOR.

Acquisition in India :—All Compulsory acquisitions in India are carried out by the authority of the Government. The Collector under the Act is always either the Collector of the District or an officer especially empowered by the Government. The Collectors are, therefore, Government Officers. Even when lands are acquired for Railways, local bodies, such as Calcutta Improvement Trust, Municipalities and District Boards or public companies, the land is acquired by the Government and after acquisition is handed over to the Local body or company concerned. The Collectors, are therefore, entirely independent of the local body which acquires the land.

Collector, His Status :—A Collector holding an enquiry under the Act is not a judicial officer, nor is the proceeding before him a judicial proceeding. He acts as the agent of the Government for the purpose of acquisition clothed with certain powers to require attendance of persons to make statements relevant to the matters which he has to enquire into. *Ezra* v. *Secretary of State,* 30 C. 36 : 7 C.W.N. 249 : 32 C. 605 (P.C.). So it has been held in *B. I. S. N. Co.* v. *Secretary of State for India in Council,* 38 C. 230 that the High Court has no jurisdiction to review an order made by the Collector under Sec. 11 of the L. A. Act as the Collector acting under that section is not a Court but only an agent of the Government. *Durga Das Rakhit* v. *Queen Empress,* 27 C. 280 ; *Ezra* v. *Secretary of State,* 30 C. 36 ; *Balkrishna Daji Gupte* v. *The Collector of Bombay,* 47 B. 699. In *Ezra* v. *Secretary of State,* 32 C. 605, theid Lordships of the Judicial Committee observed "it will be found that the proceedings resulting in the 'award' are administrative and not judicial ; that the 'award' in which the enquiry results is merely a decision (binding only on the Collector) as to the sum that shall be tendered to the owner of the lands ; and that if a judicial ascertainment of value is desired by the owner he can obtain it by requiring the matter to be referred by the Collector to the Court. It is to say the least, perfectly intelligible that the expert official charged with the duty of fixing a value should be possessed of all the information in the hands of the department and it should, at the same time avail himself of all that is offered at the enquiry." The

Collector acting under the L. A. Act, as has been seen, being not a judicial officer, he cannot be properly regarded as a Revenue Court within the terms of Sec. 476 of the Code of Criminal Procedure. His proceedings under the L. A. Act are not regulated by the Code of Civil Procedure nor is he right in requiring a petition put in before him to be verified in accordance with that code so as to make any false statement punishable as perjury. *Durga Rakhit* v. *Queen Empress,* 27 C. 820.

Valuation by the Collector :—The Collector is not in a position to pass any final order in the matter of the value of the land or the right to claim the price fixed. A party dissatisfied can claim a reference to the Civil Court, whose duty it is to settle the matter in dispute judicially, *Durga Rakhit* v. *Queen Empress,* 27 C. 820.

Collector, His Functions :—Although the appointment of a collector under the L. A. Act rests solely with the Local Government yet when they have once appointed that Officer, he must be allowed to prosecute his enquiries under the Act upto their end, without interference from the Government in their executive capacity. *Dessabhai* v. *The Special Officer, Salsette,* 36 B. 599. The Collector has under Section 11 to enquire into the value of the land and into the respective interests of the persons claiming the compensation and after awarding a sum for compensation he has to apportion the said compensation among all the persons known or believed to be interested in the land of whom or of whose claim he has information. *In re the L. A. Act, in the matter of Pestonjee Jehangir,* 37 B. 76: 14 Bom. L.R. 507: 15 I.C. 771. His enquiry and his valuation are departmental in their character and made for the purpose of enabling Government to make a tender through him to the persons interested. Therefore the fact that in such a proceeding the Collector did not sufficiently consider the evidence produced by the owner of the land and that he formed his opinion on materials which were not before him as evidence would not render the proceedings improper. If the owners doubted the correctness of his valuation his remedy lay in demanding a reference to the Civil Court under Section 18 of the Act, *Ezra* v. *Secretary of State,* 30 C. 36: 7 C.W.N. 249. His ultimate duty is not to conclude by his so called award, but to fix the sum which in his best judgment is the value and should be offered. It is not implied that the Collector would be precluded by anything in the statute from inviting at the enquiry the criticism of the owner or any information he had in his hands if he thought that in the circumstances this would advance his knowledge but this is for his discretion. *Ezra* v. *Secretary of State,* 32 Cal. 605 (P.C.).

Collector, His Jurisdiction :—The Collector under L. A. Act I of 1894 has limited jurisdiction. He is bound by the Official declaration in the Local Official Gazette. The Collector can not acquire or give possession of any land beyond the boundaries given in the declaration. If he does so, he commits an act of trespass. He has to find out the precise quantity of land notified for acquisition within specified boundaries given in the declaration, value the same under the provisions of the Act, and give possession accordingly. If the Local Government committed a mistake, by giving an erroneous boundary, the Collector can not cure the mistake. If the land acquired be for Government purposes and if the Government takes possession of land beyond the limits prescribed by the declaration or in excess of the area for which compensation is paid, it trespasses on private land and is liable under the law of the country ; and so is a company if the acquisition is for its purposes. But such excess land cannot be valued and compensation awarded for it under the provisions of the Act. *Harish Chunder Neogi* v. *Secretary of State,* 11 C.W.N. 875. The word "Court" in the L. A. Act does not include a collector nor is there any authority given to the Collector to administer an oath or to require verification. *Durga Rakhit* v. *Queen Empress,* 27 C. 820.

Can the duties of a Collector be delegated :—Section 3 (c) of Act I of 1894 provides that the expression Collector means the collector of a district and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under the Act. It does not include any officer to whom the Deputy Commissioner thinks fit to delegate his duties. *Mahomed Siddique* v. *The Secretary of State for India in Council,* 8 O.C. 118.

(d) COURT.

Principal Civil Court of Original Jurisdiction :—"In Section 3 of the Bill we have added a clause amending the definition of "COURT." It appears to us that all references from the Collector's auhority, should be to an independent judicial authority, and, now that the Punjab and Oudh have divided their judicial from their revenue establishments, there are few parts of India in which there are not judicial officers who have no concern with executive administration. We think, therefore, that the time has now come when the Court to which references under the Act will be made should be generally the principal Civil Court of original jurisdiction. To meet, however, the case of provinces which have still no Courts of separate Civil Jurisdiction or the case in which pressure of business may require assistance to the ordinary Civil Court, we have

retained the clause in the original definition which empowers Local Government to appoint special judicial officers to perform the functions of a Judge under the Act." *Report of the Select Committee on the Bill to amend the L. A. Act, 1870 dated 2nd February, 1893.*

The Court exercising jurisdiction under the L. A. Act I of 1894 is ordinarily the District Court which is the principal Civil Court of original jurisdiction outside presidency towns of Calcutta, Madras, Bombay and Rangoon, but shall not include a High Court in the exercise of Original Civil Jurisdiction. *Vide Section 3 (15) of the General Clauses Act X of 1897.*

Special Judicial Officer :—The Local Government has authority under the Act to appoint a Judge, other than a District Judge, to hear land acquisition cases. He is called a Special Land Acquisition Judge, and the Court he presides over is called, Special L. A. Court. The appointment by the Local Government of a special judicial officer to try L. A. Cases must be made by publishing the same in the Local Official Gazette. In the absence of specially authorized Judicial Officer to try L. A. Cases it is the District Judge who exercises jurisdiction to try L. A. Cases because the Court of the District Judge is the principal Civil Court of Original Jurisdiction.

Additional District Judge :—An additional District Judge as such is competent to hear and dispose of references under the L. A. Act which are made over to him for disposal by the District Judge under the Provisions of Sec. 8. Cl. (2) of the Bengal N. W. P. and Assam Civil Courts Act of 1887 though he may not be specially empowered by the Local Government in that behalf, *Jogesh Chandra Sanyal* v. *Rasik Lal Saha*, 50 I.C. 690. Under the provisions of the Bengal, N. W. P. and Assam Civil Courts Act of 1887 an additional District Judge, has jurisdiction, as a Judge of the principal Civil Court of Original Jurisdiction to hear references. *Jogabandhu* v. *Nanda Lal*, 50 I. C. 798.

Land Acquisition Court and Its Jurisdiction :—The Court of the Land Acquisition Judge is a Court of special jurisdiction, the powers and duties of which are defined by Statute and it cannot be legitimately invited to exercise inherent powers and assume jurisdiction over matters not intended by the Legislature to be comprehended within the scope of the enquiry before it. It was never contemplated by the statute to authorise the Land Acquisition Judge to review the award of the Collector, to cancel it or to remit it to him to be recast, modified or reduced. The Court of the Land Acquisition Judge is restricted to an examination of the question whch has been referred by the Collector for decision under sec. 18 and the scope of the enquiry can not be enlarged at the instance of parties who have not

obtained or cannot obtain any order for reference, *Shyam Chandra Mordraj* v. *Secretary of State*, 35 C. 525 ; *Gajendra Sahu* v. *Secretary of State*, 8 C.L.J. 39 ; *B. I. S. N. Co.* v. *Secretary of State*, 38 C. 230 : 15 C.W.N. 87 : 12 C.L.J. 505.

Exclusive Jurisdiction of the L. A. Court :—When statutory rights and liabilities have been created and jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy, such jurisdiction is *exclusive* and cannot concurrently be exercised by the ordinary courts. But when a party has not been able to put forward his claim by reason of defects and irregularities in the proceedings as where the claim has been put forward but not adjudged, the jurisdiction of the Civil Court can not be treated as superseded. A suit will lie in the Civil Court in respect of claims for damages which could not have been foreseen at the time of the acquisition proceedings. *Maharaja Sir Rameswar Sing* v. *Secretary of State*, 34 C. 420 : 11 C.W.N. 356 : 5 C.L.J. 669. It has all along been held that a decree which apportions a compensation made under the L. A. Act by a Court to which such matter has been referred, is *final* and cannot be questioned otherwise than by the appeal permitted (formerly under Sec. 39 of Act X of 1870) under Sec. 54 of Act I of 1894. *Nilmonee Singh Deo* v. *Rambundhoo Roy*, 4 C. 757. All questions of title arising between the rival claimants in a Land Acquisition proceeding should be decided by the L. A. Judge in the L. A. case and should not be left to be decided by a separate suit. The Court was bound to decide all points, the decision of which was necessary to enable it to pass orders as to the disposal of the money including questions arising as to who was the proper heir of the claimant who had died after the deposit of money in Court, *Babujan* v. *Secretary of State*, 4 C.L.J. 256 ; *Nihal Kuar* v. *The Secretary of State*, 13 I.C. 550 ; *Kdishna Kalyani* v. *R. Braunfield*, 20 C.W.N. 1028 : 36 I.C. 184.

Res Judicata :—Upon construction of the Act, a decision of the Court, if not appealable, and if there is an appeal, then decision of the Appellate Court is final and not liable to be contested by a suit, *Nilmonee Sing Deo* v. *Rambhundoo Roy*, 4 C. 757. It has been laid down that it is the duty of the Judge in apportioning the compensation money which he is directed to apportion, to decide the question of title between all persons claiming a share of the compensation money. Pontifix J. in deciding the question observed "I should be extremely reluctant to hold that any decision under the L. A. Act should be treated as *res judicata with respect to the title to other parts of the property belonging to persons* who may come before the Judge, under Sec. 39 (now Section 19) because although a decision with respect to the particular money then before the Court is a decision

which is final with respect thereto unless appealed from, and any party summoned before the Judge but has not appeared is bound by such decision, I don't think that a decision of the Judge with respect to the compensation money should be treated as *res judicata* affecting *other* parts of the claimant's property," *Nobodeep Chunder* v. *Brojendra*, 7 C. 406. An adjudication as to the right of persons claiming compensation under the L. A. Act I of 1894, concludes the question between the same parties in subsequent proceedings, *Mohadevi* v. *Neelmoni*, 20 M. 269; *Chowakaram* v. *Vayyaprath*, 29 M. 173. The Judicial Committee of the Privy Council has gone further in discussing the question in *Ramchandra Rao* v. *Ramchandra Rao*, 26 C.W.N. 713: 25 C.L.J. 545 and held that it was not open to the (Civil) Courts to review the decision of the High Court in the proceeding under Sec. 32 of Act I of 1894, that the lady had a limited estate to the property without power of alienation. It is not competent to the Court in the case of the same question arising between the parties to review a previous decision no longer open to appeal given by another Court having jurisdiction to try the second case. This principle is of general application and is not limited by section 11 of the C. P. C., so that the fact that the decision in question was not obtained in a former suit did not make any difference.

Party not appearing:—A person, who having been made a party to a reference under the L. A. Act, had the opportunity and duty of litigating his claim before the special L. A. Judge but did not then press his claim to any part of the compensation, is not entitled to come again to the Civil Court and re-open the question. *Bhandi Sing* v. *Ramadhin Roy*, 10 C.W.N. 991: 2 C.L.J. 359; *Ranjit Sinha* v. *Sajjad Ahmad Chaudhury*, 32 I.C. 922; *Satish Chunder Sinha* v. *Anondo Gopal Das*, 20 C.W.N. 816: 33 I.C. 253.

When does a Suit lie in the Civil Court?—The general presumption is against construing a Statute as ousting or restricting the jurisdiction of the Superior Courts. The intention must be expressed in clear terms, not merely implied but necessarily implied: "The general rights of Queen's subjects are not hastily to be assumed to be interfered with and taken away by Acts of Parliament. Such statutes are to be strictly construed when their language is doubtful." *Jacobs* v. *Brett*, L. R. 20 Eq. 1. A construction which would impliedly create a new jurisdiction is to be avoided, especially when it would have the effect of depriving the subject of his freehold or of any common law right......or of creating an arbitratory procedure." Maxwell, P. 158 (Second Edition), p. 184 (Third Edition). No doubt, when a power has been conferred in unambiguous language by statute, the Courts cannot interfere with its exercise

and substitute their own discretion for that of persons or bodies selected by the Legislature for that purpose, *Attorney General* v. *Great Western Railway Company* (1876) 4 Ch. D. 735; *The Queen* v. *Collins* (1876) 2 Q.B.D. 30; *London County Council* v. *Attorney General*, (1902) A. C. 165; *East Freemantle Corporation* v. *Annois* (1902) A. C. 213. Nor does any presumption arise against the finality of a decision by an authority with statutory powers to pronounce in respect of a duty or liability created by the Statute. For then "there is no ouster of the jurisdiction of the Ordinary Courts; for they never had any." Maxwell, P. 156 (2nd Ed.). *Bolvant Ramchandra* v. *Secretary of State*, 29 B. 480. No Civil Court has any jurisdiction to go into any question decided by the L. A. Court. 'In a claim disposed of by the special procedure prescribed by Act I of 1894, the order or adjudication of the rights of the owners or claimants to the property for which compensation was assessed, and awarded, cannot be questioned otherwise than by provisions of the Act, and the Civil Courts are not competent to re-open and determine matters disposed of in accordance with the Act in a separate suit. *Amolok Sha* v. *Charan Das*, 16 P.W.R. 1913: 17 I.C. 684.

A person claiming a portion of the compensation awarded by the Collector in a Land Acquisition proceeding is entitled to maintain a Civil suit to establish his claims where the question of apportionment of the compensation money has not been determined by the Collector, *Chandu Lal* v. *Ladli Begum*, 18 P. W. R. 19: 49 I.C. 657.

(e) COMPANY.

Section 6 of the L. A. Act provides that subject to the provisions of Part VII of the Act, whenever it appears to the Local Government that any particular land is needed for a public purpose or *for a company*, a declaration shall be made to that effect. Therefore it is clear that the provisions of the L. A. Act may be put in force for the acquisition of land (1) for a public purpose, (2) for a Company. Then the question arises: is it for each and every company that lands can be acquired by Government under the provisions of the L. A. Act? It has therefore, become necessary to define the expression "Company" so as to indicate clearly, at the very outset, what the term "Company" means and for what companies the lands can be acquired by the Government under the L. A. Act and the expression "Company" whenever it occurs in the L. A. Act, means *a Company that is registered either under the Indian Companies Act VI of 1882 as amended by the Indian Companies Act VII of 1913 or incorporated by an*

Act of Parliament in Great Britain carrying on business in India. The last clause has been added by the Land Acquisition (Amendment Act) XVII of 1919 to include also societies which are registered under the Society Registration Act XXI of 1860 or a registered society within the meaning of the Co-operative Societies Act II of 1912. Hence it follows that it is only for registered companies or "societies" registered under the Indian Companies Act in India or under the English Companies Act in Great Britain that lands can be compulsorily acquired under the provisions of the L. A. Act Part VII, and not for company or companies which are not so registered.

(f) PUBLIC PURPOSE.

Includes:—We have seen in notes under Sec. 2(a) that when in an interpretation clause it is stated that a certain term "includes' so and so, the meaning is that the term retains its ordinary meaning and the clause enlarges the meaning of the term and makes it include matters which the ordinary meaning would not include, *The Official Assignee Bombay* v. *Firm of Chandulal Chimanlal,* 76 Ind. Cas. 657 ; *In the matter of Nasiban,* 8 C. 534. Hence it follows that what the Legislature intended by using the word "includes," is that, besides the ordinary meaning of the expression "public purpose," whatever that may be, provision for village sites is included in the term "public purpose." The reason for this inclusion is clearly stated in the final report of the select committee dated 23rd March, 1893, "In section 3, the interpretation clause, we have added at the instance of the Government of Bombay and the Punjab and the Chief Commissioner of Burma, a provision which will enable the Local Government to apply the Act for the acquisition of village-sites in those parts of the country where it may be customary for the State to provide village sites. The Committee are in concert with the great majority of the authorities consulted in declining to recommend any further extension of the scope of the Act. On the 1st February, 1894 when the Bill came up for final discussion it was proposed that in the clause defining the term "public purpose" the word "necessary" should be substituted for "customary." The object of the proposed amendment was to give the Local Governments wider power for the provision of "Village-sites" when it appeared to be necessary, although not customary. It was urged that the clause thus amended would still be permissive and not obligatory and that the Governments should have the power to act on an emergency such as the destruction of a village by the encroachment of a river. It was contended on the other hand that the proposed amendment was unreasonable ; for "it is a man's own business to find his own house, and not to take his neighbour's

land for the purpose, unless he is willing to sell it." The Council were equally divided on the question nine against nine but his Excellency Lord Elgin, the president gave his casting vote against it, and the motion was lost.

Public Purpose:—There is no definition of a "public purpose" in the L. A. Act nor any limitation regarding what is likely to prove useful to the public: both matters are left to the absolute discretion of the Local Government and as in *Ezra* v. *Secretary of State*, 30 C. 37: 7 C.W.N. 249, it was held that it was not competent for the Court to assume to itself the jurisdiction to impose restriction on this discretion by holding that in an enquiry under Section 40 of the Act the persons whose land was intended to be acquired should have had an opportunity to appear and object and it was also laid down that such a course was wholly contrary to the policy of the Act and section 40 of the Act constituted the Government custodian of the public interests and *sole* judge as to whether the land was required for the construction of the work and whether that work would prove useful to the public. Considerable change has been introduced by the Land Acquisition (Amendment) Act XXXVIII of 1923, which among others, provided that any person interested in any land which has been notified under section 4 Sub-Sec. (1) as being needed or likely to be needed for a public purpose or for a company, may within thirty days after the issue of the notification, object to the acquisition of the lands or of any land in the locality as the case may be. Every objection made under Sub-sec. (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing such objections, and after making such further enquiry, if any, as he thinks necessary submit the case for the decision of the Local Government together with the record of the proceedings held by him and a report containing his recommendations on the objections. *The decisions of the Local Government on the subject shall be final.* Hence it will be seen that where a declaration has been issued under Section 6 of the L. A. Act I of 1894 stating that certain land is required for a public purpose, a Court is debarred from enquiring into the question whether the purpose for which the land in respect of which such a declaration has been issued is required for a public purpose or not. *Secretary of State* v. *Akber Ali*, 45A. 443. The Indian Legislature has power to frame laws for the acquisition of private lands and has power to frame provisions in the Act for the purpose of carrying out the provisions of the enactment. One of such provisions is that contained in Sec. 3 (f) of the L. A. Act, which declares the doing of a certain act for public purpose. It is not open to the Court to go behind the Act and say that it is not a public purpose. *The Government has been constituted proper*

authority for deciding what a "public purpose" is. When Government declares that a certain purpose is a public purpose it must be presumed that Government is in possession of facts which induce it to declare that the purpose is a public purpose. *Veeraraghavachariar* v. *Secretary of State,* 28 M.L.J. 204: 86 I. C. 485: (1925) A. I. R. 837.

"Public Purpose" defined :—It is not possible to define what a public purpose is, but there can be no doubt that the provision of house-site for poor people is a public purpose for it benefits a large class of people and not one or two individuals. When the primary object is personal gain whether that be of a private individual or of a company the public benefit resulting from the action of the person or company is too remote and the purpose cannot be said to be a public purpose. *Veeraraghayachariar* v. *Secretary of State,* 28 M.L.J. 204: 86 I.C. 485. The phrase "public purpose" includes a purpose, that is, an object or aim in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned. In 1854 the E. I. Company granted the land in suit to the predecessor in title of the defendent for a term of 99 years. A proviso was inserted in the lease reserving to Government the right to resume possession of the land for the purpose of providing suitable house accommodation for Government officials, held that the provision of providing suitable house accommodation for Government officials was a "public purpose." "Public purpose" includes any object which secures the good of the public by securing the efficiency of those servants of the Crown on whose service public good materially depends. *The University of Bombay* v. *The Municipal Commissioners of the city of Bombay,* 16 Bom. 217; *Hamabai* v. *Secretary of State,* 13 Bom. L. R. 1097: 12 I C 871; *Moosa Hajee Hassan* v. *Secretary of State,* 13 A.L.J. 117: 19 C.W.N. 305. (P C.). The building of quarters for Municipal servants is a "public purpose." *Municipal Corporation Bombay* v. *Ranchordas,* 27 Bom. L. R. 1120: 90 I.C. 605: (1925) A. I. R. (B) 538. In connection with street Improvement scheme in a congested and insanitary area the Corporation of Calcutta was held to have power under the Calcutta Municipal Act 1899, Secs. 14 and 357, to acquire surplus land for the purpose of erecting, at the expense of a private benefactor, a Dharamsala for the use of the numerous worshippers resorting at certain seasons of the year to a Hindu temple within the area of the improvement scheme. *Amulya Charan Banerjee* v. *Corporation of Calcutta,* 49 Cal. 838. The provision of house sites for Panchamas is a "public purpose." *Veeraraghavachariar* v. *Secretary of State,* 28 M.L.J. 204: 86 I.C. 485: (1925) A.I.R. (M) 837.

Permanent Public Purpose :—The Act nowhere provides that when land is acquired for company it should be acquired

for a permanent public purpose or for a permanent company. *Ezra* v. *Secretary of State*, 7 C.W.N. 249.

Limitation to Acquisition :—The limits within which the promoters of the undertaking are authorized to purchase and take lands are defined by the special Act or Acts under which they derive the power. In Section 6 of the Lands Clauses Act, 1845, it is made lawful for the promoters to agree with the owners "of any land by the special Act authorised to be taken and which shall be required for purposes of such Act. The clause, defining the limits within which the promoters of the undertaking can purchase and take lands is of the following or some similar form." The purposes for which lands may be purchased or taken are defined in the Special Act or Acts under which a company is incorporated. *North British Rail Co.* v. *Tod* (1846) 12, C. L. & F. 722 : 4 Rail Cas. 449. The following are some of the special Acts under which lands may be compulsorily acquired for the purposes mentioned in those Acts—(1) Calcutta Improvement Act V. of 1911 (B. C.), (2) City of Bombay Improvement Act IV of 1898 (Bombay Council, (3) The Northern India Canal and Drainage Act VIIIof 1873, (4) The Indian Telegraph Act XIII of 1885, (5) The Indian Tramways Act XI of 1886, (6) The Indian Railways Act IX of 189, (7) Indian Works of Defence Act VII of 1903, (8) Indian Electricity Act IX of 1910, (9) Calcutta Municipal Act, IV of 1923, (10) The Calcutta Ports Act. Where land was acquired by the Secretary of State at the instance of and for the Port Commissioners and was, on their paying for it, conveyed to them by him to be held by them as trustees for the public for which it had been acquired, held, that the public purposes referred to were the purposes or one or more of those of the Port Commissioners' Act. In mentioning that the land was to be laid out in the construction of a road, the notification simply stated one of the particular purposes for which land might be acquired for a public purpose as these words are to be understood in the said Act. *K. K. Shelly Bannerjee* v. *Commissioners for the Port of Calcutta*, 3, C.L.J. 585.

Village sites :—Where an acquisition of land is declared by the Government as being made for a purpose which the Legislature has declared to be a public purpose, it is not open to the court to go into the question whether the purpose is a public purpose or not.

Where the legislature has acted within power, it is not open to a Municipal Court to question the legality of the provisions of the enactment passed by the legislature. If an enactment or any provision thereof is *ultra vires* of the legislature, it would be open to the court to question the legality of the

enactment or its provisions. A village-site is not land reserved in a village for communal purposes but land which is reserved for being parcelled out as house-sites and also all lands on which houses have been built. *Veraraghavachariar* v. *Secretary of State*, 28 M.L.J. 204: 86 I.C. 485: (1925) A.I.R. (M) 837.

(g) PERSONS ENTITLED TO ACT.

Persons Competent to Acquire:—Under the English law the authority to purchase or to take lands is given to the persons empowered by the special Acts to execute the work or undertaking for which they are required. Section 2 of the Land Clauses Act, 1850, denominates such person as 'promoters of the undertaking", and defines this term to mean "the parties whether company, undertakers, commissioners, trustees, corporations, or private persons by the special act empowered to execute works or undertakings of whatever nature, which shall by the special Act be authorised to be executed." The authority to acquire land in India is vested in the Government though under certain Acts the local authorities are empowered to acquire in their own behalf.

Persons Competent to Sell :—The persons authorised, or who can be compelled to sell and convey lands to the promoters of the undertaking, are in the Land Clauses Act, 1845, denominated "owners". Section 3, defines the term "owner"—"where under the provisions of this special Act or any Act incorporated therewith, any notice shall be required to be given to the owner of any land, or where any act shall be authorized or required to be done with the consent of any such owner, the word "owner" shall be understand to mean any person or corporation who, under the provisions of this or the special act, would be able to sell and convey lands to the promoters of the undertaking." Section 7 completes the definition of "owner" by describing what persons or corporations are enabled to sell and convey lands to the promoters of the undertaking. It is the general intention of this section to give every class of persons and corporations the power to sell and convey, since an omission might render the completion of an undertaking impossible except through a fresh application to Parliament. Section 7 commences with a general power enabling all parties to sell and convey any lands, or any interests in lands of which they are possessed, or to which they are entitled, to the promoters of the undertaking.

These general words do not include the Crown whose rights are not affected without special mention by an act of Parliament.

The Section then particularizes certain parties:—

(1) **Corporations** :—In *Re Chelsia Waterworks Co.*, (1886)

56 L.T. 421 it was held that though the company had no power to sell lands upon which their waterpipes were laid yet if a special Act authorized the compulsory taking of any of the company's lands for the purpose of another undertaking, the purchase money may be paid to the company as absolute owners.

(2) **Tenancy in tail or for life** :—It was held in *Re Cuckfield Burial Board, Exparte Earl of Abergavenny* (1855) 19 Bev. 153 : 24 L.J. (Ch) 585 that estates inalienable settled by Act of Parliament could be purchased or taken by the promoters, and that the tenant for life could bar his heirs in tail and all remaindermen, except the Crown which is not bound by any Act of Parliament without being named. An equitable tenant for life may contract for the sale of lands but the trustees in whom the legal estate is vested are necessary parties to the conveyance. A tenant for life by selling under the provisions of the Land Clauses Act becomes entitled to have the costs of reinvestment paid by the promoters.

(3) **Married woman seised in their own right or entitled to dower** :—In *Cooper* v. *Gostling,* (1863) 9 L.T. 77 : 11 W.R. 931, it was held, that where lands had been devised to A for life with remainder to a husband and wife, their heirs and assigns, for ever, the wife was in the position of a woman seised in her own right. The trustee of a married woman absolutely entitled to her separate use cannot sell and make a title to bind the *cestui que trust,* and there is no distinction between her position and that of a man. *Peters* v. *Lewis and East Grinstead Rail Co.,* (1881) 18 ch. D. 429.

(4) **Guardians and Committees of Lunatics and Idiots :** —Section 7 does not empower Committees of lunatics and idiots to enter into an agreement to sell lands of the lunatics or idiots without the consent of the Lord Chancellor, *Re Taylor* (1849) 6 *Ry. Case* 741 ; *Re wade* (1849) 1 H. and Tw. 202 ; *Re Brown* (1849) 1 Macn & G. 201 ; but Section 120 (a) of the Lunacy Act (1890) empowers the judge in lunacy by order to authorize the committee of a lunatic's estate to sell any property of the lunatic. A similar principle was applied in *Tink* v. *Rundle,* (1849) 10 Bev. 318 where it was held that the company before proceeding under S. 81 of the Land Clauses Act (1845) to enter on lands in possession of a Receiver appointed by the Court of Chancery, must get leave of the Court.

(5) **Trustees and Executors :**—Trustees or Feoffees in trust for charitable or other purposes, executors or administrators, and all parties for the time being entitled to the receipt of rent and profits of any such land in possession, or subject to any state in dower, or to any lease for life, or for lives and years or for years or any less interest.

............These general words are intended to authorize a trustee to convey when the *cestui que trust* is under disability and cannot himself convey; but they do not empower a bare trustee for an absolute owner to sell and convey so as to bind a *cestui que trust* who is not under any disability. A married woman having the properties settled to her separate use is in the position of a *cestui que trust* not under disability, and her trustee cannot nor this section gives a valid conveyance to bind her interest in the lands. The promoters, unless the *cestui que trust* is under a disability must treat with the beneficial owner and cannot disregard him by negotiating solely with his trustee. *Cripps on the Law of Compensation 5th Ed., Ch. IV.*, p. 44.

Section 3 (g) of the L. A. Act I of 1894 has been taken from Sections 2 & 7 of the Land Clauses Act, 1845 to enable the Government, the acquiring body in India, to treat with persons not having the right to convey an absolute title.

Minor —The guardian of a minor's estate has no power to waive a right to compensation for part of the estate taken under the L.A. Act, although the owner, had he been of full age, might have waived it. *Luchmeswar Singh* v. *Chairman of the Darbhanga Municipality*, 18 Cal. 99: 17 I.A. 90.

Adverse Interest against the Minor :—The Municipality of Poona wishing to take up the applicant's land, the Collector of Poona determined the amount of compensation, and tendered it to the applicant, who declined to accept it. The Collector thereupon referred the matter to the District Judge. Two assessors were appointed to aid him, one by the applicant and another by the Collector. The nominee of the Collector was the Mamlatdar of Poona, a rate-payer and an *ex-officio* member of the Municipality, who, whilst a member of the managing committe, had unsuccessfully negotiated with the applicant for the purchase of the ground. The District Judge made an award upholding the Collector's valuation; held, that the award was bad and must be set aside as the Collector's nominee had, under the circumstances, real bias, and was not a qualified assessor within the meaning of Section 19 of the L. A. Act X of 1870, *Kashinath Khasgivala* v. *The Collector of Poona*. 8 Bom. 553.

Certain lands belonging to the applicant a minor, was taken by the Municipality of Hubli under the L. A. Act (X of 1870). The mamlatdar of Hubli who was an ex-officio member of the Municipal Committee, took part in the negotiations for the purchase of the land. He also gave evidence as to its value in the inquiry before the Collector. As the price offered by the Collector was not accepted by the applicant, the matter was referred to the District Judge under Section 13 of the Act,

for the purpose of determining the amount of compensation. On this reference the Mamlatdar acted as an assessor appointed by the Collector and was also examined as a witness as to the value of the land. But no objection was taken to his acting as an assessor. The District Judge eventually upheld the collector's award. On an application under Section 622 of the Civil Procedure Code (Act XIV of 1882) it was held, that the award was bad. The Mamlatdar had, under the circumstances, a substantial interest in the matter, sufficient to disqualify him from acting as an assessor, held, also, that the minor applicant was not estopped from objecting to the competency of the Mamlatdar, by the fact that his guardian had not raised any such objection in the court below, and might, therefore, be taken to have waived it. Assuming that there was waiver, it could not bind the minor as it was not for his benefit. *Swamirao* v. *The Collector of Dharwar,* 17 Bom. 300.

Court of Wards :—Although the Court of Wards had no power to alienate the land of a minor of whose estates it had charge, yet possession might have been lawfully taken of the land for a public purpose, under and in conformity with the L. A. Act, if there had been due compliance with the provisions of the Act, as regards compensation to the minor's estate. Where, however, compensation had not been given, and a merely nominal compensation had passed, the Collector, not having acted as representative of the Court of Wards, so as to protect the interest of the minor, held, that no valid title to the land was established as against the Ward and that on his attaining full age, he would receive it with *mesne* profits. *Luchmeswar* v. *Durbhunga Municipality,* 18 Cal. 99.

Shebait :—Land dedicated to an idol or to religious and charitable purposes, is land belonging to the Shebait or trustee who has no power to alienate the same. Where a portion of the Debutter property was acquired under the L.A. Act, and the compensation money was invested in approved securities, the Shebait was entitled to withdraw a portion of the invested funds and apply the same to effect necessary repairs to the remainder of the Debutter property. *Kamini Debi* v. *Promotho Nath Mukherjee,* 39 Cal. 33: 13 C.L.J. 597: 10 I.C. 491. The position of a Shebait is analogous to that of the manager of the infant. He is entitled to possess and to manage the dedicated property, but he has no power of alienation in the general character of his right. *Ramprossonna Nandi* v. *Secretary of State for India in Council* 40 Cal .895: 19 C.W.N. 652: 22 I.C. 272.

INTRODUCTION.

There is a distinction between the position of a Collector under Part II of the Act and his position under Part III. In the former, he acts practically as the *agent* of the Government in fixing the price to be paid and in taking possession of the land which is acquired. His award is not binding on the owner as he can ask for a reference under Section 18; nor is the Government bound till possession is taken as it can under Section 48 withdraw from the acquisition till then. It was with reference to these circumstances that his action was held to be an *administrative one* by the Privy Council. *Parameswara Aiyar* v. *Land Acquisition Collector*, Palghat, 42 Mad. 231.

PART II.

ACQUISITION.

Preliminary Investigation.

Publication of preliminary notification, and powers of officers thereupon.

[2]**4.** *(1)* Whenever it appears to the Local Government that land in any locality is needed or likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially [1]authorized by such

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[2] As to amendments with which sections 4 and 5 should be read when land is required for the purposes of a Company, *see* s. 38 (2), *infra*.

A protected monument may be acquired under this Act as if its preservation were a "public purpose" within the meaning of the Act, *see* s. 10 of the Ancient Monuments Preservation Act, 1904 (7 of 1904), General Acts, Vol. VI.

[1] For officers specially authorized in Burma, *see* Burma Rules Manual.

Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

NOTES.

Analogous English Law :—Part II deals with the provisions of law relating to the powers of entry on lands before purchase by officers with a view to ascertain its adaptability and value. Sections 4-17 are Sections 84-91 of the Land Clauses Act, 1845, and they contain the provisions which apply with respect to the entry on land by promoters of the undertaking. Such entry on lands, which are required to be purchased and are permanently used by the promoters, is rendered expressly unlawful except by consent of the owners and occupiers or until after the promoters shall either have paid to every party having an interest in such lands, or deposited in the bank the purchase money or compensation agreed or awarded

to be paid to such parties respectively for their respective interests. There are, however, *two exceptions* to this general rule.

(1) Promoters may under Section 84 without previous consent enter on lands for the purpose merely of surveying and taking levels of such lands and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, after giving not less than three, nor more than fourteen days' notice to the owners or occupiers, making compensation for any damage thereby occasioned to the owners or occupiers.

(2) The second exception is that where lands are required for permanent uses, the promoters may enter after complying with all the requisitions contained in Sections 85-88. *Vide Cripps, p. 84, 5th Edition.*

Object :—Sections 4 and 5 of the Act lay down certain rules under which a preliminary investigation may be made into the conditions and circumstances of the land which the Local Government may consider likely to be needed for a public purpose or for a company. These sections do not always come into operation, and are only required when a preliminary survey is necessary or in cases in which uncertainty may exist as to the position of the land to be taken up or as to its suitability for the purpose for which it is required, *e.g.*, when operations on a large scale are in contemplation and it is necessary to determine the line of a railway, road, canal, or other important work: *Board's Instructions, 11, see Bengal L. A. Manual, 1910, p. 53.*

It is incumbent on the officer whose duty it is to select land for public purposes to endeavour to avoid buildings, etc., the acquisition of which will entail unnecessary expenditure on Government or annoyance to owners if the object sought can be equally well attained by slight alteration of the alignment of site chosen, or in some other manner. If the land applied for contains religious buildings or tombs, the fact must be specifically noted in the application. *Board's Instructions, 8. See Bengal L. A. Manual, 1910, p. 52.*

Notification :—A notification under Section 4 of the Act must in all cases be followed by a declaration under Section 6 as soon as it has been decided to proceed with the acquisition and the position and boundaries of the land to be acquired have been fixed and determined. *Board's Instructions 11. See Bengal L. A. Manual, 1910, p. 53.* Before inquiries can be made under Section 4 a notification must be published by the Government in the local gazette stating that the land is likely to be acquired and public notice of the notification must be given by the

Collector. The result of issuing such a notice was that, under Sub-section (2), it would be lawful for any officer, either generally or specially authorised by the Government on their behalf and for his servants and workmen, to enter upon and survey and take levels of the land and any land in such locality, *Nur Mahomed* v. *Secretary of State*, 28 Bom. L.R. 582 : (1926) A.I.R. (B). 369 : 96 I.C. 329.

Retrospective Effect —Taking the amended Section 4 as it stood on January 1st 1924, it could only apply to lands which appeared to the Local Government to be needed for any public purpose *thereafter*. It could not possibly apply to lands which had appeared previously to the amendment to be needed or likely to be needed, so that the provisions of Section 5A should apply. *Nur Mahomed* v. *Secretary of State*, 28 Bom. L.R. 582 : (1926) A.I.R. (B) 369.

Rules :—Rules framed by the Board of Revenue in furtherance of the Act, and in order to better enable the officers of the Government to carry out the requirements of the law, are not *ultra vires*, *Ezra* v. *Secretary of State for India*, 7 C. W.N. 249 : 30 C. 36.

[2]**5.** The officers so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

Payment for damage.

NOTES.

Damage —Any damage caused during the enquiry must be paid for. The decision of the Collector of the district as to the amount of such damages is final and any dispute must be referred to him. His enquiry is a summary one and he has no power to take evidence on oath, *Peterson* p. 3.

Obstruction to entry :—The owner or occupier of any land, which has been notified under Section 4 as likely to be acquired for a public purpose and to whom at least 7 days'

2 *See* the footnote to section 4, *supra*.

notice was given regarding the intended entry of the Collector or his staff for the purpose stated in Sec. 4, has no right whatsoever to obstruct the Collector or his men from entering into the land and completing their enquiries. If, however, any resistance were made to enquiries of this nature, then the person obstructing the officer authorised by Government, would render himself liable to punishment under *Sec. 46 of Act I of 1894.*

Enquiry by the Collector.—The investigation to be made by the Collector in cases referred to him under *Section 5* is a summary one. The law gives him no power to take evidence on oath in conducting it. He may order a local enquiry which he is at liberty to make either in person or by a Deputy or Sub-Deputy Collector. The responsibility for the amount of any award for damages under *Sec. 5* will, however, in all cases rest with the Collector. *Board's Instructions 12 (2), Bengal L. A. Manual 1910, p. 53.*

Objections.

5A. (1) Any person interested in any land which has been notified *under Section 4*, sub-section *(1)*, as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further enquiry, if any, as he thinks necessary, submit the case for the decision of the Local Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Local Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under the Act.

NOTES.

This section is new and has been introduced by the Land Acquisition (Amendment) Act XXXVIII of 1923, which received the assent of the Governor-General on the 5th August 1923 and has been in force since 1st January 1924 (*Gazette of India dated 8th December 1923, Part I, p. 1684*).

Objects and Reasons :—"The Land Acquisition Act I of 1894 does not provide that persons having an interest in land which it is proposed to acquire, shall have the right of objecting to such acquisition ; nor is Government bound to enquire into and consider any objections that may reach them. The object of this Bill is to provide that a Local Government shall not declare, under Section 6 of the Act, that any land is needed for a public purpose unless time has been allowed after the notification under Section 4 for persons interested in the land to put in objections and for such objections to be considered by the Local Government. *Gazette of India Pt. V dated 14th July 1923, page 260.*

Wishes of the Owner :—It has been pointed out in *Ezra* v. *Secretary of State,* 30 C. 36: 7 C.W.N. 240, that in making an acquisition of land, the wishes of the owner of the land was wholly irrelevant under the Act before amendment. It did not contain any provision for any objection on the part of the owner to the acquisition itself. All his objections were limited to the amount of compensation and matters connected therewith, such as measurements and area.

Defect in Act I of 1894.—Though there is no such provision in the English Land Clauses Consolidation Act, 1845 (8 & 9 Vict. Ch. XVIII) and the subsequent amendments, such provision is found in Sec. 35 of the Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. Ch. XX) which runs as follows: "In any case in which a notice of three weeks is hereinbefore required to be given it shall be lawful for the owner or the occupier of the lands therein referred to, within ten days after the service of such notice, by notice in writing to the company to object to the company making use of such lands, either on the ground that the lands proposed to be taken for the purposes aforesaid, or some part thereof, or of the materials contained therein, are

essential to be retained by such owner, in order to the beneficial enjoyment of other neighbouring lands belonging to him, or on the ground that other lands lying contiguous or near to those proposed to be taken would be more fitting to be used for such purpose by the company ; and upon objections being so made such proceedings may be had as hereinafter mentioned."

Defect Removed :—To remedy this defect in Act I of 1894 and to bring it in line with the English Act, Sec. 5 (A) has been added by Act XXXVIII of 1923. Hence the wishes of the owner are no longer irrelevent as stated in *Ezra* v. *Secretary of State,* 30 C. 36 : 7 C.W.N. 249, but is a necessity and must be consulted before any acquisition can be made. The section provides—

(*a*) that any person who would be entitled to claim an interest in the compensation, if the land was acquired, may object ;

(*b*) The objection must be made in writing ; and

(*c*) must be made within 30 days after the issue of the notification under section 4.

(*d*) The objection must be made to the Collector, which by S. 3 (c) means the Collector of the District and includes a Deputy Commissioner and any officer specially appointed by the Government to perform the functions of a Collector under this Act.

(*e*) It is the duty of the Collector to give the objector an opportunity of being heard either in person or by pleader.

(*f*) The Collector may or may not make any enquiries but he must hear all objections before submitting the case for the decision of the Local Government with a report of his recommendations.

The result of the Amendment :—The result of the additions to this section is that the Collector must in his report discuss the objections and give his reasons for overruling them in cases of different opinion. Moreover the decision of Government under the circumstances cannot be an *ex parte* decision as was the case before.

Cases in which this Section will not apply :—In cases of urgency under S. 17 the Collector under the direction of the Local Government on the expiration of 15 days from the publication of the notice mentioned in Section 9 may take possession without making the award, and also when owing to any change in the channel of a navigable river, or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land

for the maintenance of their traffic etc., the Collector may immediately after publication of notice and with the previous sanction of the Local Government enter upon and take possession of such land. In such cases the Local Government reserves to itself the discretion to suspend the operation of Sec. 5 (A) *Vide Sec. 17 (4) post.*

Retrospective effect of the Section:—The amending Act XXXVIII of 1923 repealed the provisions of Act I of 1894 to this extent that it made compulsory for the Government to give notice under Section 4 (1) if it appeared to the Government that the land was needed for a public purpose, and there can be no doubt that the intention of the Government in amending the Act was that it should only apply to cases of lands which might appear to Government after the Act came into force to be needed or likely to be needed for any public purpose. It could not possibly have been intended that in the hundreds of cases which would ordinarily be pending at the time the amending Act came into force, and in which possession had not been handed over to Government, the owner could ask the Court to restrain the Government from taking possession until a notice under section 4 had been issued, so that not only the whole proceedings should commence *de novo*, but that owners of land in such cases should have an opportunity of protesting against the acquisition of their properties. *Nur Mahomed* v. *Secretary of State*, 28 Bom. L.R. 582: (1926) A.I.R. (B) 369.

Declaration of intended Acquisition.

Declaration that land is required for a public purpose.

6. *(1)* Subject to the provisions of Part VII of this Act, when the Local Government is satisfied, after considering the report, if any, made under Section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or

wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

After declaration, Collector to take order for acquisition.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

NOTES.

Sections 6 & 7 of the Act lay down the conditions precedent to the exercise of jurisdiction and in case they are not complied with, the acquisitions would not be under the Act, and the Government, if they took possession, should be liable to be sued as trespassers. *Daryadinomal* v. *Secretary of State*, 2 S.L.R. 68.

Amendments :—By Section 4 of Land Acquisition (Amendment) Act XXXVIII of 1923 the words "when the Local Government is satisfied, after considering the report, if any, made under Section 5A, Sub-section (2)" in Section 6 Sub-section (1) have been substituted in place of "whenever it appear to the Local Government."

Reasons for Amendment.—The widening of the scope of Section 5, by inserting Section 5-A, confers a new right upon the owner to object to the acquisition, before the collector, and has rendered imperative for the Local Government to consider the views of the Collector and the objection of the owner, if any. But it lies solely, with the Local Government to decide after considering the objections of the owner and the report of the Collector thereon, whether the acquisition is for public purpose or not. The decision of the Local Government is final *i.e.*, it can not be questioned in any way.

Declaration—What to Contain :—"Up to this stage the Collector has usually taken no proceedings under the Act. Before any formal proceedings can be taken, a declaration must be made by Government under Section 6. A draft of the declaration is always required from the Collector when he submits his estimate. It must contain the area of the land, the district in which it is situated, the purpose for which it is required, and the place where a plan of it can be seen. The Act does not require that the boundaries should be given but in all ordinary cases they are invariably given In preparing the draft declaration the Collector should see that there are no objections to the acquisition. Mosques, temples, churches, tombs, or graveyards should not be included unless this is necessary, and if they are included the fact should be reported and it should be stated whether there is or is likely to be an objection on the part of the public. The question of severance should also be considered. The Government instructions require that the estimate should contain a certificate by the Collector to the effect that "the estimate is fair and the rates have been arrived at after local enquiries and inspection of the ground and with reference to the settlement records and road-cess papers and the records of the Registration Department." *Peterson* p. 4 & 5. After considering the estimate, report, objections etc., the Government decides whether the lands are required for public purposes and if it decides in favour of acquisition and approves the proceedings of the Collector, it orders a declaration to be published in the Local Official Gazette.

Publication of Declaration :—The declaration when published in the Gazette gives public notice of the intended acquisition. It is not open to any person or authority to challenge it or to say that the land is not needed for that purpose or that another piece of land should be taken or that the purpose is not a public purpose. On these points the declaration is conclusive. Once it has issued, all the land included within it must be acquired unless Government withdraws from the acquisition under Section 48. This is the general rule. *Peterson, p. 6.* The law requires that when any particular land

is required for the two purposes for which the Local Government is authorised by the Legislature to put the Act into operation, a declaration to that effect should be previously made. It is very desirable that the Local Government should endeavour to avoid issuing different declarations for the acquisition of the portions of the same tract of land when the declarations follow each other in rapid succession. The encouragement of piecemeal acquisition results in loss to all the parties concerned, not excluding the Government itself, *Fink* v. *Secretary of State,* 34 Cal. 599. It has been held in *Bhagwandas Nagindas* v. *Special Land Acquisition Officer,* 17 Bom. L.R. 192, that the acquisition by the Collector of the whole land of a claimant in the face of a declaration for a partial acquisition thereof without publication of a fresh declaration is illegal and *ultra vires.*

Declaration is Conclusive :—The declaration is conclusive evidence that the land is needed for "Public purpose or for a Company." The notification under Section 6 of the L. A. Act is conclusive so far as Section 4 of the Evidence Act is concerned. In *Re Manickchand Mahate* v. *Corporation of Calcutta,* 48 Cal. 916, the Court held, that the Legislature in the L. A. Act has expressly constituted the Local Government the sole arbiter as to what land should be acquired for public purpose, *Balvant Ramchandra* v. *Secretary of State,* 29 Bom. 480 ; *Shastri Ramchandra* v. *Ahmedabad Municipality,* 24 Bom. 600. A Court has no jurisdiction to enquire into the question whether the purpose for which land, in respect of which a declaration under it had been issued, is a public purpose or not, *Secretary of State* v. *Akbar Ali,* 45 All. 443 : 21 A.I.J. 338 : 74 I.C. 8 ; *Ezra* v. *Secretary of State,* 9 C.W.N. 454 (P.C.) ; *Trustees for the Improvement of Calcutta* v. *Chandra Kanto Ghosh,* 47 I.A. 43 (P.C.) : 47 Cal. 500 : 32 C.L.J. 65 (P.C.) ; *Kasturi Pillai* v. *Municipal Council, Erode,* 43 M. 280 : 37 M.L.J. 618 : 10 L.W. 336 : 26 M.L.T. 268 : 53 I.C. 646. Whenever the Local Government does sanction an improvement scheme, there is a duty to announce the fact by notification and the publication of a notification is conclusive evidence that the scheme has been duly framed and sanctioned. This provision does not affect the right of the claimant to institute a suit to have it declared that the Board in framing the Scheme acted *ultra vires, Municipal Corporation, Bombay* v. *Ranchoddas Vandrabondas,* (1925) A.I.R. (B) 538 ; *The Trustees for the Improvement of Calcutta* v. *Chandra Kanto Ghosh,* 47 Cal. 500 : 32 C.L.J. 65 (P.C.). Under Section 6 Cl. 3 of the L. A. Act, a declaration of the Government in the Gazette that the land sought to be acquired is needed for a public purpose is conclusive evidence of the fact, and after such a declaration it is not open to the owner to contend in any Court that the land was not needed for a public

purpose. *Ponnaia* v. *The Secretary of State,* 97 I.C. 471 : (1926) A.I.R. (M.) 1099 : 51 M.L.J. 338.

Acquisition following Declaration :—The Collector under the L. A. Act I of 1894 has limited jurisdiction. He is bound by the Official declaration in the Local Official Gazette. The Collector cannot acquire or give possession of any land beyond the boundaries given in the declaration. If he does so; he commits an act of trespass. He has to find out the precise quantity of land notified for acquisition within specified boundaries given in the declaraton, value the same under the provisions of the Act and give possession accordingly. If the Local Government committed a mistake by giving an erroneous boundary the Collector cannot cure the mistake. If the land acquired be for Government purposes, and if the Government takes possession of land beyond the limits prescribed by the declaration or in excess of the area for which compensation is paid, it trespasses on private land and is liable under the law of the country ; and so is a company if the acquisition is for its purposes. *Harish Chandra Neogy* v. *Secretary of State,* 11 C.W.N. 875 ; *Gojendra Sahu* v. *The Secretary of State,* 4 C.L.J. 39. But if all the land included within the declaration is not required, Government can be asked to withdraw from the acquisition under Section 48, after making such compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder. The Collector is bound to acquire the land under declaration within two years from the date of the publication of the declaration under Section 6 and if, within the period of two years from the date of the publication of the declaration under section 6, in respect of any land, the Collector has not made an award under Section 11 with respect to such land, the owner of such land shall be entitled to receive compensation for the damage suffered by him in consequence of delay (Sec. 48A).

Compensation to be paid out of Public Revenues Wholly or Partly :—Section 6 of the Act which requires that where an acquisition of land is made by Government otherwise than on behalf of a company, the compensation to be awarded must be paid either wholly or partly out of public revenues, must receive a reasonable construction and must be treated as implying payment of some part that is substantial and material. A payment by Government of one anna out of a compensation amount of Rs. 3,000 and odd is not a real and bona-fide compliance with the terms of the section but is a mere evasion of the law, *Chatterton* v. *Cave,* (1878) 3 App. Cas. 483. When money is paid into a Government Treasury by the hand of one private individual and after passing intact through the Treasury is paid out into the hands

of another private individual, it cannot with any accuracy be described as becoming part of the public revenues within the meaning of Section 6 of the L. A. Act. *Ponnaia* v. *Secretary of State*, 51 M.L.J. 338: 97 I.C. 471: (1926) A.I.R. (M.) 1099. But in *K. Senga Naicker* v. *Secretary of State*, 51 M.L.J. 849: 25 L.W. 34, the plaintiffs were the owners of the suit property which was acquired for the purpose of forming a road by a Government Notification. The cost of the road was defrayed by private contributions, and the Government added the sum of one anna from public revenue. The private contributions were accepted as such by the Government and kept as separate deposit for the purpose of constructing the road. They could not therefore be said to be public funds, as they were never merged in the general funds of the public. There was no evidence that the acquisition had been brought about by any indirect motive or that the Land Acquisition Act had been set in motion in order to annoy the owners. *Held*, that the contribution of one anna by the Government towards the compensation to be awarded for the property was sufficient to satisfy the proviso to Sec. 6 (1) of the L. A. Act, and that the declaration made under Sec. 6 (1) of the Act was valid. *Ponnai* v. *Secretary of State*, 51 M.L.J. 338 *dissented from*. *Per* Madhavan Nair, J. —"If the Legislature intended that a *substantial* portion of the compensation should be paid out of public revenue, then it would have used appropriate language to convey that idea."

Section 7 :—After the declaration is published, Government issues an order to the Collector under Section 7 to take order for the acquisition of the land included in it. On receipt of this order, the Collector proceeds to take action under the Act.

What is to be acquired :—We have seen that it is land as defined in Sec. 3 (a) that is the subject of acquisition, and the land, when acquired, becomes free from all encumbrances (Sec. 16), and all private rights cease. *Collector, 24 Parganas* v. *Nobin*, 3 W.R. 27. Therefore what has to be acquired in every case under the Act is the aggregate of rights in the land, and not merely subsidiary right, such as that of a tenant, *Babujan* v. *The Secretary of State*, 4 C.L.J. 259, or fishery right, *Raja Shyam Chandra* v. *The Secretary of State*, 7 C.L.J. 445: 12 C.W.N. 569.

User after acquisition :—A public body which has acquired land under the L. A. Act in this country for one specific purpose, may not subsequently abandon that purpose and use the land so acquired for some other purpose for which they have not acquired it. *Guru Das Kundu Choudhury* v. *Secretary of State*, 18 C.L.J. 244.

Agreement for sale unaffected :—Although proceedings have been taken for the compulsory acquisition of land under and Land Acquisition Act, the owner and the acquiring party remain competent to enter into an agreement as to the price, and an agreement so made is capable of being enforced in the ordinary way. An agreement between the parties as to the price does not interfere with the jurisdiction of the Collector under the Act. *The Fort Press Company Ld.* v. *Municipal Corporation, City of Bombay,* 44 B. 797: 46B 767 (P.C.): 43 M.L.J. 419: 16 L.W. 654: 24 Bom. L.R. 1228: (1922) M.W.N. 798: (1922) A.I.R. (P.C.) 365: 36 C.L.J. 539: 68 I.C. 980.

Land to be marked out, measured and planned.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

NOTES.

Measurement :—Section 8 of the Act requires the Collector to mark out the land and to measure it and to make a plan of it, unless the land has already been measured and a plan made. In Calcutta, the Collector usually proceeds upon the Survey Map and in all districts which have been recently surveyed, this is the safest course, as there is a legal presumption in favour of the Survey Map. But, if necessary, the Collector will have a fresh survey made. *Peterson P.* 7. After declaration this is the first important step to be taken by the Collector in the acquisition proceeding. The Collector is bound by the official declaration in the local official gazette. It should be noticed that the Collector cannot acquire or give possession of any land beyond the boundaries given in the declaration. If he does so, he commits an act of trespass. He has to find out the precise quantity of land notified for acquisition within the special boundaries given in the declaration, value the same under the provisions of the Act and give possession accordingly. If the Local Government committed a mistake by giving an erroneous boundary, the Collector cannot cure the mistake. If the land acquired be for Government purposes and if the Government takes possession of land beyond the limits prescribed by the declaration or in excess of the area for which compensation is paid, it trespasses on private land and is liable under the law of the country; and so is a company if the acquisition is for its purposes. *Harish Chandra Neogi* v. *Secretary of State,* 11

C.W.N. 875: *Gajendra Sahu v. The Secretary of State,* 4 C.L.J. 29.

Obstruction to Measurement:—Whoever wilfully obstructs any person in doing any of the acts authorised by Section 4 or Section 8 shall on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees or to both *Sec. 46.*

Notice to persons interested.

9. *(1)* The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents

authorized to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866.[1]

NOTES.

Notice Imperative:—Section 9 provides that the Collector *must* cause public notice to be given at convenient places, at or near the land to be taken, stating that the Government intends to take possession of the land and claims to compensation for all interests in such land may be made to him.

Notice under Section 9 is, therefore, essential to the exercise of the Collector's jurisdiction in order to give validity to a proceeding for the acquisition of land and finality to the award in which they terminate. The power of acquisition with all the statutory limitations and directions for its use must be strictly pursued, and every essential pre-requisite to the jurisdiction called for by the statute must be strictly complied with. *Maharaja Rameswar Singh* v. *Secretary of State,* 34 Cal. 420: 11 C.W.N. 356: 5 C.L.J. 669.

Clause (2) prescribes what the notice shall state and amongst other things, that the notice shall require all persons interested in the land to appear before the Collector at a time mentioned in the notice. It has expressly provided that the time shall not be earlier than 15 days after the publication of the notice. The Act requires that two notices are to be served and accordingly the service of the first notice containing what is prescribed by the Act was absolutely necessary and the same is not dispensed with merely because the second notice is served. The words "to the same effect" in cl. (3) really mean that the second notice should have the same matters mentioned in it including the time as the first notice. *Krishna Shah* v. *The Collector of Barieley,* 39 All. 534: 15 A.L.J. 450: 40 I.C. 76.

Under Section 9 of the L. A. Act, the Collector must, in addition to a general notice, serve a notice to the occupier, if

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[1] *See* now the Indian Post Office Act, 1898 (6 of 1898), General Acts, Vol. V.

any, of the land and on all such persons known or believed to be interested therein or to be entitled to act for persons so interested. It is not sufficient for him merely to serve a notice on one of the three brothers each of whom is equally interested under the Act, and the mere fact that one of the three brothers accepts a notice on behalf of the others does not raise any presumption that he had any authority to do so. *Nitai Dutt* v. *Secretary of State,* 3 Pat. 354 : 81 I.C. 576 : (1924) A.I.R. (Pat.) 608. It is quite clear that notice is essential to the exercise of jurisdiction, *Maharaja Rameswar Singh* v. *Secretary of State,* 34 Cal. 470 : 11 C.W.N. 356 : 5 C.L.J. 669.

Waiver :—Where a collector has omitted to take some steps which is essential to the validity of the proceedings, a waiver of the defect by the owner has to be clearly established and it must be shown that the owner acted with full knowledge of all the facts. There can, moreover, be no waiver where the owner appears and expressly reserves his legal rights. *Maharaja Rameswar Singh* v. *Secretary of State,* 34 Cal. 420 : 11 C.W.N. 356 : 5 C.L.J. 669.

Persons Interested :—Section 9 does not apply to the case of a decree-holder seeking satisfaction of a decree, but it covers the case of persons who have definite interests in the land acquired. In *Basamal* v. *Tajamal Husain,* 16 All. 78, it was held that when land is taken up by Government, public notice is given thereof and notification is made that "claims to compensation for all interests in such land may be made to him" (Collector), it was open to the decree-holders to put in a claim under this section. Having failed to do so they are not entitled by force of the decree under Section 88 of the T. P. Act. to attach the amount of compensation awarded by the Collector to the mortgagor. The Calcutta High Court, however, dissented from this view, and held, that a decree-holder is entitled to obtain through the court which granted him the decree, satisfaction of that decree out of the money awarded as compensation on the acquisition of the mortgaged property by Government, that money representing, so far as he is concerned, the property which was hypothecated to him as security for the mortgage debt. *Jatuni Chowdhurani* v. *Amar Krishna Saha,* 6 C.L.J. 745 : 13 C.W.N. 350 : 1 I.C. 164.

Notice defective :—The statute does not prescribe any form for the notice, but it is clear that it must contain the material facts which would enable the land-owner to identify the land intended to be taken up. The very object of the notice would be defeated if it did not contain a sufficiently accurate description of the property which could inform the parties in interest what land it was proposed to appropriate ; the identification of the thing desired is of the utmost importance, and if the

notice does not describe the property against which it is directed, it must be taken to be defective. In the second place, where the statute requires that the notice should give the owner a prescribed time, after the expiry of which claims and objections might be preferred, a notice which fixes a shorter time is in contravention of the statute and is consequently defective. The principle is that no man shall have his rights determined without an opportunity to be heard in their defence, and where a statute prescribes a minimum period which the person affected is to have for submission of his defence, such time cannot be allowed to be reduced. *Maharaja Rameswar Singh* v. *Secretary of State,* 34 Cal. 470: 11 C.W.N. 356: 5 C.L.J. 669.

Remedy of the claimant when notice defective :—As was laid down in *Bhandi Sing* v. *Ramadhin Ray,* 2 C.L.J. 350, that when statutory rights and liabilities have been created and jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive and cannot concurrently be exercised by the ordinary Courts. The same view has been adopted by a Full Bench of the Calcutta High Court in *Collector of Pabna* v. *Ramanath Tagore,* (1867) B.L.R. (F.B.) 63, where it was laid down that if the legislature creates an obligation to be enforced in a specific manner, as a general rule, performance cannot be enforced in any other way. It is well settled, however, that even where a specific remedy is provided by a statute, it is necessary in order to remit the owner to such remedy, and exclude his remedy by suit, that the party acquiring the property should have substantially complied with its requirements and where the proceedings for acquisition are not perfected and completed, they will not debar the remedy by a regular suit. The essence of the matter is, that the party has his remedy before the special Court. When, however, the party has not been able to put forward his claim by reason of defects or irregularities in the proceedings, or when the claim has been put forward but not adjudged, the jurisdiction of the Civil Court cannot be treated as superseded. Whether the claim be regarded as one under the Land Acquisition Act or under the Railways Act, if there was a refusal on the part of the Collector to adjudicate upon it the plaintiff has the remedy by a suit in the Civil Court. *Maharaja Sir Rameswar Singh* v. *Secretary of State,* 34 C. 470: 11 C.W.N. 356: 5 C.L.J. 669. If the provisions of the L. A. Act are not strictly complied with but are made a cloak for attempting to obtain a transfer of an indefeasible title under the guise of a public purpose the proceedings do not operate towards the creation of a valid title to the land in Government. *Ponnaia* v. *Secretary of State,* 97 I.C. 471: (1926) A.I.R. (M.) 1099.

Service of the notice :—Under Section 45, service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of notice under Section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge. Whenever it may be practicable the service of the notice shall be made on the person therein named. When such person cannot be found, the service may be made on any adult male member of his family residing with him and if no such adult male member can be found, the notice may be served by fixing a copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business or by fixing a copy thereof on some conspicuous place in the office of the officer aforesaid or of the Collector or in the Court house, and only on some conspicuous part of the land to be acquired. Provided that if the Collector or Judge so directs a notice may be sent by post, a letter addressed to the person named therein at his last known residence, address or place of businees and registered under Chapter VI of the Indian Post Office Act VI of 1898 and service of it may be proved by the production of the addressee's receipt. The notice may be served either by registered post or by personal service. Personal service of notice or delivery of the notice to an agent would be good service of delivery to the principal, though in fact, the notice was destroyed by the agent and never seen or heard of by the principal. It was an entire mistake to suppose that the addressee must sign the receipt for the registered letter himself or that he cannot do so by the hand of another person or that if another does sign it on the addressee's behalf the presumption is that it never was delivered to the addressee himself, immediately or mediately. In *Harihar Banerjee* v. *Ram Soshi Rai*, 23 C.W.N. 77: 29 C.L J. 117, the Privy Council held that "if a letter properly directed containing a notice is proved to have been put into the Post Office it is presumed that the letter reached its destination according to the regular course of business and was received by the person to whom it was addressed. That presumption would apply with greater force to registered letters." In *Girish Chandra Ghose* v. *Kishori Mohan Das*, 23 C.W.N. 319, a notice was given by registered post, but the letter containing the notice was returned by the Post Office, the addressee having refused to accept it, held that "under Section 114 of the Evidence Act the Court was entitled to presume that the letter containing the notice reached the defendant and the fact that the letter was returned by the Post Office as not accepted by the addressee did not destroy the presumption."

Provision to serve notice and its effect :—The Land Acquisition Act evidently contemplates the valid acquisition of land and its absolute vesting in Government after a *bona fide*

award or reference by the Collector has been made and possession has been taken, notwithstanding that persons interested may not have had notice. This is clear from Section 9 itself: for the very provision that *persons known or believed to be interested* are to have notice shows that persons interested who are not known or believed to be interested may not have notice and yet the proceedings may go on validly. When it is known or believed that a person is interested and yet the collector wilfully and preversely refuses to give him notice, there his proceedings cannot be considered *bona fide* and should be held to be colourable and therefore inoperative in vesting the land in the Government as was held in the case of *Luchmeswar Sing v. Chairman, Darbhanga Municipality*, 18 C. 99: 17 I.A. 90. But where through mere inadvertence or mistake a person interested has not had notice served upon him, and the reason for the non-service is rather allied to ignorance of the fact of his being interested than to any wilful preversity, there has been substantial compliance with the provisions of the Act and that there is no sufficient reason for holding that the vesting of the land in the Government under Section 16 has not taken place. *Ganga Ram Marwari* v. *Secretary of State*, 30 C. 576. When in acquisition proceedings the Collector wilfully and perversely abstains from giving the necessary notice to the owner of the land under Section 9 (3) of the L. A. Act, his proceedings can not be considered *bona fide* and are inoperative in vesting the land in Government; but where through mere inadvertance or mistake, a person interested has not had notice served upon him, the proceedings are not thereby invalidated. *Secretary of State* v. *Quamar Ali*, 16 A.L.J. 669: 51 I.C. 501. Under section 16 of the L. A. Act the making of an award and taking possession of land thereunder vest the property absolutely in the Government and the mere fact that notice has not been served on the occupier of the land in accordance with Sections 9 (3) and 45 of the Act does not render the award or subsequent proceedings void, nor does it prevent the vesting of the property to Government. *Kasturi Pillai* v. *Municipal Council, Erode*, 43 M. 280: 53 I.C. 646: 37 M.L.J. 618: 10 L.W. 331: 26 M.L.J. 268; *Burn & Co.* v. *Secretary of State for India*, 76 I.C. 579: (1923) A.I.R. (C.) 573.

Remedy when notices unserved:—It should be noted that there may be (1) cases in which a person interested may not have any notice whatsoever of the L. A. proceedings, and (2) cases in which a person interested has knowledge of the L. A. proceedings though no notice under Section 9 was served upon him and he abstains from taking any steps in the L. A. proceedings, not having been served with any notice. In cases coming under (1) i.e., in which a person interested has no know-

ledge whatsoever of the proceedings of acquisition, section 31 provides that nothing contained in the L. A. Act shall affect the liability of any person, who may receive the whole or any part of the compensation awarded under this Act, to pay the same to the person lawfully entitled thereto i.e., by regular suit. *Saibesh Chandra Sirkar* v. *Sir Bejoy Chand Mehtab*, 26 C.W.N. 506: 65 I.C. 711. *Vide notes under S. 31.* With regard to cases coming under (2) in which a person interested has knowledge of the L. A. proceedings, though not served with notices, it has been laid down in *Gangaram Marwari* v. *Secretary of State*, 30 Cal. 576, that there has been wilful negligence on the part of the claimant in not putting forward his claim before the collector though he was aware of the proceedings, and that he has no remedy against the Government.

Statement of Claim:—On receipt of the notices the parties should file their claims with as little delay as possible and also the statements called for in the special notices. No Court Fees are required upon claims under Section 19 of Act VII of 1870. The claim should contain the following particulars: (1) The name of claimant and share in the land acquired, (2) names of co-sharers and their shares, if any, (3) abstract of title, i.e. whether inherited or purchased, when and from whom and for what amount, (4) details of any mortgage or charge on the land, if any, (5) rent or profits derived from the land for the past three years, (6) whether competent to alienate the land by voluntary sale, (7) total amount claimed under separate heads, e.g. for land, structures, trees, crops, severance, loss of earnings, damages for removal etc., (8) whether the area given in the notice is accepted or not.

Statement should be in writing and signed:—The statement of claim filed before the Collector as required by Section 9 (2) and (3) must be in writing and must be signed by the party making it but does not require any verification because the expression "court" in the L. A. Act does not include a Collector nor is there any authority given to the Collector to administer an oath or to require a verification. The Deputy Collector acting under the L. A. Act is not a judicial officer, he cannot be properly regarded as a Revenue Court within the terms of Section 476 of the Code of Criminal Procedure, his proceedings under the former Act are not regulated by the Code of Civil Procedure, nor is he right in requiring a petition put in before him to be verified in accordance with that Code. *Durga Rakshit* v. *Queen Empress*, 27 Cal. 820. A reference to cl. (2) of Section 9 shows that the clause permits the Collector to require any oral statement to be made in writing and signed by the party or his agent. *Gyanendra* v. *Secretary of State*, 25 C.W.N. 71. Merely placing an uncertified copy of a sale-deed

before the Collector is not sufficient compliance with the provisions of Section 9. *Orient Bank* v. *Secretary of State*, 7 L. 416 : 94 I.C. 245 : (1926) A.I.R. (L.) 401.

Exaggeration or over-estimate of the value :—In proceedings under the L. A. Act what may be found to be an exaggeration or over-estimate of the value of the land cannot properly constitute a false statement, which would demand a prosecution for perjury, and the fact that some years before, the land was offered for a much lower price, is no sufficient ground for imputing such an offence. *Durga Rakshit* v. *Queen Empress*, 27 Cal. 820.

Omission to Claim :—It is intended by Section 9 (2) of the L. A. Act that the owner of the property about to be acquired should appear and state his claim in the manner provided by the clause so as to enable the acquisition officer to make a fair, reasonable and proper award based upon a proper enquiry after the proper means have been placed before him from holding such enquiry. Section 25 (2) makes the refusal or omission to comply with the provisions of Section 9 (2) without sufficient cause an absolute bar to the obtaining of a greater sum than that awarded by the Collector. *Secretary of State* v. *Bishan Dutt*, 33 All. 376 : 8 A.L.J. 115 : 9 I.C. 403. The facts that there had been previous negotiations between the Government and the persons whose lands government wished to acquire and that the Government was aware of the price which the owner had asked for the land would not afford a sufficient reason for the owner omitting to put in any claim under Section 9 of the L. A. Act I of 1894, nor relieve the owner from the consequences of such omission as set forth in Section 25. *Narain Dat* v. *The Superintendent, Dehra Dun*, 37 All. 69. In L. A. cases, persons deliberately omitting to claim the property to be acquired are ordinarily estopped from afterwards asserting their rights before the civil court. *Haji Umar Din* v. *Khairdin*, 138 P.W.R. 1909. When the appellant omits to claim within the meaning of Section 9 the District Judge is justified in refusing to award anything more than the amount awarded by the Collector. *Ramprosad* v. *Collector of Aligarh*, 40 I.C. 274. A claim for damages for severance cannot be entertained by the Civil Court unless it was originally made before the Collector, *Umar Baksh* v. *The Secretary of State*, 46 I.C. 906.

Omission to claim in due time :—When a claimant appears before the Collector but not on the date fixed in the notice, it cannot be said that he is not entitled to file any claim before the Collector. The cases of *Secretary of State* v. *Gobind Lal Bysak*, 12 C.W.N. 263 and *Secretary of State* v. *Bishun Dutt*, 33 A. 423 : 8 A.L.J. 115 : 9 I.C. 423, are distinguished,

for in those cases the objector never appeared or made any claim prior to the award. It cannot be said that the claimant omitted to make a claim pursuant to the notice under section 9, merely because he did not make it by the date originally fixed in the notice. Proceedings before the collector were adjourned from time to time, and that the claim, if any, made before the award was a claim pursuant to the notice under Section 9 (2) of the Act, *Secretary of State* v. *Sohanlal,* 44 Ind. Cas. 883.

Power to require and enforce the making of statements as to names and interests.

10. *(1)* The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.[2]

NOTES.

Notice under Section 10 :—The issue of a notice under Section 10 requiring any person to make a statement containing the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise is discretionary and not compulsory as a notice under Section 9.

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[2] General Acts, Vol. I.

The L. A. Act contemplates two separate and distinct forms of procedure, one for fixing the amount of compensation described as being an award and the other for determining in case of dispute the relative rights of the persons. Though the word "owner" is not defined in the act, an owner must be deemed to be one of the persons interested in the land to be acquired (section 3 (b) *ante*). A proprietor sub-proprietor, mortgagee, tenant or sub-tenant are all owners for the purposes of Section 49. *Krishna Das* v. *Collector of Pabna,* 16 C.L.J. 165. "It is not always necessary or even desirable, to treat the whole land covered by declaration as a single case. The land may ordinarily be divided into separate portions or plots and separate proceedings may be held as regards each plot, provided only that the basis of division be land and land alone. It is not permissible to divide off the separate interest in a particular plot and treat each as a separate case. The general practice should be to spilt up the block or land covered by the declaration into a number of separate and distinct plots, each plot or group of plots representing not a separate interest but a separate claim. There is a wide difference between a separate interest and a separate claim. A may be interested in a piece of land as a Zamindar, B as Putnidar, C as an under-tenant, but the three interests of A, B, C make up only one claim. The point for enquiry is the whole value of the land, though that value may be divisible among several persons." *Boards Instructions 52 (1), Bengal L. A. Manual 1910 p. 71.*

Object of the section –The object of Section 10 (1) is to enable the Collector to have an estimate of the rents and profits ordinarily received or receivable from the property in question in order that he may be able fairly to assess a compensation. It is not possible to assess that claim for compensation on the rents and profits for one year only. Three years is the period taken in Government estimates, hence a statement for 3 years was considered as fair. *Proceedings in Council.*

Non-compliance with the notice—Every person required to make or deliver a statement, either under Section 10 or Section 9, shall be deemed to be legally bound to do so and is made criminally liable for default under Sections 175 and 176 of the Indian Penal Code. It will be noticed that notices under Section 10 being only for informations regarding the lands to be acquired as regards the several interests on the same and not for any claim, there is no civil liability for non-compliance with the terms of the notice as in case of Section 9. *Vide Sections 9 and 25 and notes thereunder.*

Furnishing False Information :—There is no provision that any person making a false statement before a collector

would make him liable for giving false testimony. The only liability is for disobedience of orders. *Ezra* v. *Secy. of State*, 30 Cal. 36: 7 C.W.N. 249. Any person required by the Collector to make a statement of the profits derived from the land and of the persons interested in it is liable to be punished under the Penal Code if he does not do so. A dishonestly false statement in a claim would be punishable under Section 177 of the Indian Penal Code. This would obviously not apply when there is exaggeration or overstatement, though parties would do well to avoid these. Very little use is made of these penal sections and the collector should not apply them except in a most exceptional case. *Peterson*, Page 11, Para 15. *Durga Das Rakshit* v. *Umesh Chandra Sen*, 27 Cal. 985.

Enquiry into Measurements, Value and Claims, and Award by the Collector.

Enquiry and award by Collector.

11. On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1) and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(*i*) the true area of the land;

(*ii*) the compensation which in his opinion should be allowed for the land; and

(*iii*) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

NOTES.

Select Committee Report:—"To the draft Section 11 we have added words requiring the Collector to enquire into the respective interest of the persons claiming the compensation as well as into the area and value of the land to be acquired. As regards draft Section 12, we are of opinion that a claimant of compensation should not be precluded from taking exceptions to the measurements of the Collector, if he has good grounds for considering them incorrect; and we think that the Collector should give intimation of his award to any of the persons interested who may not be present when the award is made." *Vide Select Committee Report*—D/- 2-2-1893.

Amendment—The words "at the date of the publication of the notice under Section 4 (1)" have been inserted by Section 5 of the L. A. (Amendment) Act XXXVIII of 1923 after the words "the value of the land." The object of this amendment was (1) to restrict the scope of the enquiry to the determination of the valuation *at the date of* publication of the notification under Section 4 (1) of the Act. Section 23 (1) at first provided that in determining the amount of compensation to be awarded for land acquired under the Act the Court shall take into consideration the market value of the land at the date of the publication of the declaration relating thereto under Section 6 which has now been altered by Act XXXVIII of 1923 to the date of the publication of notice under Section 4, sub-section (1)." Sales after the date of notification are discarded in as much as the value of land are more or less affected by circumstances which have arisen after that date. *In Re L. A. Act cause in the matter of Government of Bombay* v. *Korim Tar Mohomed,* 33 B. 325.

I. Enquiry:—On receipt of the statements of claim of persons interested the Collector shall enquire (1) into the objections (if any) as to the *measurements* of the lands to be acquired (2) into the value of the land at the date of the publication of the notice under Section 4 (1), and (3) into the respective interests of the persons claiming the compensation money and (4) shall make an award under his hand.

II. Award:—(i) The award shall be of the true area of the land (ii) the compensation which, in his opinion, should be allowed for the land (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land of whom or of whose claims, he has information, whether or not they have respectively appeared before him. *In Re Pestonjee Jahangir,* 37 Bom. 76: 14 Bom. L.R. 507: 15 I.C. 771.

Is the Enquiry by Collector Judicial:—The L. A. Collector, as has been seen, acts as the agent of Government for the purposes of acquisition and is in no sense of the term a judicial officer nor is the proceeding before him a judicial proceeding. *Durgadas Rakshit* v. *Queen Empress,* 27 Cal. 820. His enquiry and his valuations are departmental in their character and made for the purpose of enabling Government to make a tender through him to the person interested. Therefore, the fact that in such a proceeding the collector did not sufficiently consider the evidence produced by the owner of the land and that he formed his opinion on materials which were not before him as evidence, would not render the proceedings improper. If the owner doubted the correctness of the valuations his remedy lay in demanding a reference to a civil court under Section 18 of the Act. *Ezra* v *Secretary of State*, 30 Cal. 85: 7 C.W.N. 249. To the same effect is the view of the Judicial Committee of the Privy Council in *Ezra* v. *Secretary of State,* 32 I.A. 93: 32 Cal. 605; 9 C.W.N. 454: 1 C L.J. 227 in which their Lordships held that with regard to the second enquiry directed by the Act as to the value of the land taken thereunder the duty of the Collector under the Section relating thereto is to fix the sum which in his best judgment is the value. His proceedings are administrative and not judicial and his award, though conclusive against the Government is subject to the land-owner's right to have the matter referred to the Court. The mere fact that the Collector in making the award availed himself of information supplied to him without the knowledge of the owner and not disclosed at the enquiry before him would not in the absence of fraud or corruption vitiate the proceedings. The procedure for enquiry was contained in Sections 11-13 of the old L. A. Act X of 1870. On a day fixed, the Collector, who after the declaration was by Section 7 to take order for the acquisition of the land, was to proceed to enquire *summarily* into the value of the land and to determine the amount of compensation which, in his opinion, should be allowed for it, and to tender such amount to the persons interested. *Luchmeswar Singh* v. *Chairman, Durbhanga Municipality,* 18 Cal. 99.

Revisional Jurisdiction of the High Court:—It has already been seen that the Collector when he holds an enquiry and makes an award under Section 11 of Act I of 1894 is not a Court and is undoubtedly not a court subject to the appellate jurisdiction of the High Court. In *Ezra* v. *Secretary of State,* 32 Cal. 605 (P.C.): 9 C.W.N. 454: 1 C.L.J. 227, their Lordships of the Judicial Committee observed that when the sections relating to the Collector's award are read together it is found that the proceedings resulting in an award

are administrative and not judicial ; that the award in which the enquiry results is merely a decision binding upon the Collector as to what sums shall be tendered to the owners of the lands, and that if a judicial ascertainment is desired by the owner he can obtain it by requiring the matter to be referred by the Collector to the Court. It is reasonably clear from an examination of the provisions relating to an enquiry and award by the Collector that he is not a Court within the meaning of Section 115 of the C. P. C. (1908), much less is he a Court subject to the appellate Jurisdiction of the High Court within the meaning of Section 15 of the High Courts Act of 1861. To attract the operation of Section 15 of the High Courts Act of 1861, it must be established in the first place, that the order assailed has been made by a Court, subject to the appellate jurisdiction of the High Court. *British India Steam Navigation Company* v. *Secretary of State for India*, 38 Cal. 230: 15 C.W.N. 87: 12 C.L.J. 505: 8 I.C. 107.

Jurisdiction of the Civil Court to Review the Collector's Award :—In *British India Steam Navigation Company* v. *Secretary of State for India*, 38 Cal. 230: 15 C.W.N. 87: 12 C.L.J. 505: 8 I.C. 107 it was argued that the L. A. Judge has jurisdiction to review the award of the Collector, to set it aside as illegal and made in contravention of the provisions of the law, and to direct him to recast, modify and reduce it. The Court held that "there is no room for controversy that the Court of the L. A. Judge is a court of special jurisdiction, the powers and duties of which are defined by the statute and that there is no foundation for the contention that a court of this description can be legitimately invited to exercise inherent powers so as to assume jurisdiction over matters not intended by the legislature to be comprehended".

Measurement :—Both the Collector and the Special Judge under Act I of 1894 have limited jurisdiction. They are bound by the Official declaration in the Local Gazette. The Collector cannot acquire or give possession of any land beyond the boundaries given in the declaration. If he does so, he commits an act of trespass. He has to find out the *precise* quantity of land notified for acquisition within specified boundaries, value the same under the provisions of the Act and give possession accordingly. If the Local Government committed a mistake by giving an erroneous boundary, the Collector cannot cure the mistake. If the land acquired be for Government purposes, and if the Government takes possession of the land beyond the limits prescribed by the declaration or in excess of the area for which compensation is paid, it trespasses on private land and is liable under the law of the country ; and so is a company if the acquisition is for its purposes. *Harish Chandra Neogi* v.

Secretary of State, 11 C.W.N. 873. If a person who is interested in any land acquired under the L. A. Act has any objection to the *measurement* made by the Collector or to the amount of compensation awarded by him, such person must obtain a reference to the Court under Section 18 and cannot litigate the matter by a suit in the Ordinary Court. *Bhandi Sing* v. *Ramadhin Ray*, 10 C.W.N. 991 : 2 C.L.J. 20*n*. It should be noted, however, that objections as to the measurement, valuation or damages should be taken before the Collector, as a claim or objection will not be entertained by a Civil Court unless it was originally made before the Collector. *Umar Baksh* v. *Secretary of State*, 46 I.C. 906.

Enquiry :—The Deputy Commissioner or the Collector specially authorised to make an award may make any enquiry through other agencies. But whenever he does so, he should by unequivocal words signify that he accepts the report of the agent appointed by him and his full signature should be appended to this declaration. *Macdonald* v. *Secretary of State for India*, 19 P.L.R. 1909 : 123 P.R. 1908 : 4 I.C. 914. While the L. A. Act gives an acquiring officer very wide discretion as to the scope of the enquiry and as to the materials which he may take into consideration it requires him to make an award as to the matters mentioned in Section 11 and to have regard to the provisions of Sections 23 and 24 in determining the amount of compensation as laid down in Section 15. *Padamsi Narain* v. *Collector of Thana*, 23 Bom. L.R. 779: 64 I.C. 103. Although the appointment of a Collector under the L. A. Act rests wholly with the Local Government yet when once they have appointed that officer, he must be allowed to prosecute his enquiry under the Act upto the end without interference from the Government in their executive capacity. *Dossabhoy Bejanji* v. *Special Officer, Salsette*, 36 Bom. 599 : 14 Bom. L. R. 592. Although proceedings have been taken for the compulsory acquisition of land under the L. A. Act 1894 the owner and the acquiring party remain competent to enter into an agreement as to the price, and an agreement so made is capable of being enforced in the ordinary way. An agreement between the parties as to the price does not interfere with the jurisdiction of the Collector under the Act, *The Fort Press Co. Ld.* v. *Municipal Corporation, City of Bombay*, 46 B. 767.

Mode of valuation by the Collector :—Section 15 of the Land Acquisition Act I of 1894 provides that in determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23 and 24. *For notes on Principles of Valuation and Assessment of Compensation, vide notes under Section 23 and 24.*

Advantageous Disposition :—When Government takes property from private persons under statutory powers, it is only right that these persons should obtain such measure of compensation as is warranted by the current prices of similar property in the neighbourhood without any special reference to the uses to which it may be applied at the time when it is taken by the Government or to the price which its owner may previously have given for it. The fairest and most favourable principle of compensation to the owners is to ascertain the market value of the property not according to its present disposition but *laid out in the most lucrative and advantageous way* in which the owners could dispose of it. *Premchand Boral* v. *The Collector of Calcutta,* 2 C. 103. Profit from the most advantageous disposition of land is one test for determining its market value. The probable use of land in the most advantageous way in accordance with the use already made of neighbouring lands, leads to speculative advance in prices to which regard should be paid. The utility of land is an element for consideration in estimating its value, that is, the utility which may be calculated by a prudent business man. The market value of the acquired land is also measured from recent instances of sales in the same or in the adjoining localities and from the average rental of these and similar lands in the vicinity. The general demand for land and the consequent reflex action in the prices of all classes of lands, is a factor in the calculation of the market price of lands under acquisition. *Fink* v. *Secretary of State,* 34 C. 599. In estimating the value of land acquired by Government the future utility of the land is a consideration which ought to be taken into account ; such future utility, however, must be estimated by prudent business calculations and not by mere speculation. *Rajendra Bannerjee* v. *Secretary of State,* 32 C. 343.

In case of compulsory acquisition of land, the price should be assessed with reference to the probable use which would give the owner the best return. In fixing the price on this principle, it is necessary to be guided, as far as possible and reasonable, by the rule enunciated by Lord Trevers in *East & West India Docks Company* v. *Gattke,* 3 M. & G. 155 : 6 Rail Cas. 371 : 20 L.J. Ch. 217 : 15 Jur. 261, viz : that the Act should be expounded liberally in favour of the public and strictly against the Government or Company taking the land. Rate at which the nearest land with similar advantages have been sold within a short period before and a few months after the notification of acquisition is issued, should be taken into consideration. An average struck from sales within a period of 5 years before the acquisition of lands situate at different parts of the village with greatly varying advantages and defects can be no satisfactory criterion of the value of the land to be acquired specially

where the price has risen since the last three years or so. *Ramsaran Das* v. *Collector of Lahore*, 9 P.W.R. 1911 : 9 I.C. 228 ; *Hardwari Mal* v. *Secretary of State*, 64 I.C. 146. (For fuller treatment of the subject *See Notes under Sections 23-24*).

Enquiry as to Apportionment :—Section 11 of the L. A. Act I of 1894 provides that the Collector has to enquire (1) into the objections to measurement of the lands to be acquired, (2) into the value of the land, (3) also into the respective interests of the persons claiming the compensation, and in his award he has to apportion the compensation among all the persons known or believed to be interested in the land. Under Section 16 of the L. A. Act I of 1894 the land when acquired vests in the Government free from all encumbrances. But the land cannot vest in the Government free from encumbrances until all the interests subsisting on the land have been ascertained and paid for according to the provision of the L. A Act. On acquisition all private rights cease as has been observed in *Collector of 24 Pargannas* v. *Nobin Chunder*, 3 W.R. 27. All rights before existing whether of passage or of any other kind absolutely cease upon the acquisition of land. *Municipal Commissioners of the City of Bombay* v. *Damodar Brothers*, 45 Bom. 725. It has also been seen in the definition of the word "land" (vide notes under S. 3) that the Legislature intended to lump together in one single expression viz : "land" several things or particulars, such as the soil, the buildings on it, any charges on it and other interests in it which all have a spearate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case, arising under the Act, may require. *In The matter of Nasiban*, 8 C. 534 ; *Government of Bombay* v. *Esufali Salebhoy*, 34 B. 618 : 12 Bom. L.R. 34 : 5 I.C. 621. In *Bombay Improvement Trust* v. *Jalbhoy*, 33 B. 483 (495) Batchelor J. has rightly observed that "Reading the Act as a whole, I can come to no other conclusion than that it contemplates the award of compensation in this way, first you ascertain the market value of the land on the footing that all separate interests combine to sell ; and then you *apportion* or *distribute* that sum among the various persons interested". The antithesis between "land" and "interest in land" is well marked in Section 31 (3) of the Act. The distinction is preserved throughout the Act where "land" is always used to denote the physical object, which is, after all, the thing that has to be acquired. Provision is made for compensation to all persons interested, but claims on this head are to be adjusted in the *apportionment* prescribed under Sections 29 and 30. Under Section 3 (b) the expression "person interested" includes all persons claiming compensation to be made on account of acquisition of land under the Act. It is quite possible that a person

may be interested in the compensation money without having an interest in land in the legal sense of the term. The Act does not indicate how the Collector is to effect the apportionment and Sections 20 and 28 which deal with the proceedings of the Court, when a reference has been made under Section 18, are also silent on the question. It is not correct that the market-value of each interest is to be ascertained. The various rights of female members of a Hindu undivided family in the joint family property have no market value though such members would be interested in the compensation money. What the Collector and the Court has to do is to apportion the sum awarded amongst the persons interested in so far as possible in proportion to the value of their interests and it is impossible to lay down any general rule which can be followed. *In re the L. A. Act, In the matter of Pestonji Jehanger*, 37 B. 76 ; *Bhagirath Moodee* v. *Rajah Johur Jummah Khan*, 18 W.R. 91. Where land which is taken under the L. A. Act belongs to two or more persons the nature of whose interests therein differs, the compensation allotted therefor must be apportioned according to the value of the interests of each person having rights therein so far as such value can be ascertained. *Hirdey Narain* v. *Mrs. M. J. Powell*, 35 All. 9 : 13 I.C. 420.

Apportionment by consent :—When the tenants have come to a settlement with the landlords accepting definite amounts of the compensation moneys, the tenants have no further interest and the landlord is entitled to receive the enhanced compensation money. *Secretary of State* v. *Naresh Chandra Bose*, 44 C.L.J. 1 : (1926) A.I.R. (C) 1000.

Principle of Apportionment :—*See Notes under Sections 29, 30 post.*

Award :—Proceedings under the L. A. Act 1894 resulting in an award are, as has been observed, administrative and not judicial and the award in which the enquiry results is merely a decision binding only on the Collector as to what sum shall be tendered to the owner of the lands, and if a judicial acsertainment of the value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court under Section 18 of the Act, *Secretary of State* v. *Qumar Ali*, 16 A.L.J. 669 : 51 I.C. 501.

What is award :—The "award" as constituted by the L. A. Act is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among persons whose interests are not in dispute. A dispute between interested people as to the extent of the interest forms no part of the award. *Ram Chandra Rao* v. *Ram Chandra Rao*, 26 C.W.N. 713 (P.C.) : 35 C.L.J. 545. By Section 11 the award

is to state the true area of the land, the compensation which should be allowed for the land and the apportionment of the same. *Balaram Bhramartar Roy* v. *Sham Sunder Narendra,* 23 Cal. 526. Where land is acquired compulsorily under the provisions of the L. A. Act, compensation must be awarded in respect thereof, it being beyond the competence of the Collector or the Special Judge to hold that there is no interest in the land to be acquired for which the compensation is payable. *Bejoy Kumar Auddy* v. *Secretary of State,* 25 C.L.J. 476 : 39 I.C. 889. The actual payment of the compensation awarded is no part of the Collector's award and is not necessary to the completion of it ; the award is complete as soon as the Collector apportions the amount of compensation between the parties concerned. *Miran Buksh* v. *Feroze Din,* 232 P.L.R. 1912 : 17 I.C. 395.

Awards Piecemeal :—By a notification of the 16th February 1915, the Government declared that a portion of the premises 147 Russa Road amounting to 1 Bigha, 16 Kottahs, 3 Chittaks was required for public purposes. As the result of an appeal (*Trustees for the Improvement of Calcutta* v. *Chandra Kanta Ghose,* 44 Cal. 219 : 24 C.L.J. 246) notice was issued on the 30th March for the acquisition of 14 kottahs, 10 chattaks 27 sq. ft. in lieu of 1 Bigha 16 Kottahs 3 Chattaks as set out in the original declaration. Out of the 14 kottahs 10 chittaks and 27 sq. ft., 8 kottahs, 4 chattaks and 34 sq. ft. was acquired and award was made on the 29th May. The Collector again, on the 7th Nov. 1917 (after the Privy Council Decision in the case of *Trustees for the Improvement of Calcutta* v. *Chandra Kanto Ghose,* 47 Cal. 500, 32 C.L.J. 65) gave notice that he would acquire the balance of the land mentioned in the declaration of 16th February 1915. To this objection was taken, the argument being that the L. A. Act contemplates one declaration, one notice, one proceeding, and one award, and as there already was one proceeding and award in respect of the 8 cottahs odd it was contended that the power to take action under the Act was exhausted and the subsequent acquisition was without jurisdiction. The Court held "We must distinguish between two cases of what has been called piecemeal acquisition. A declaration may be issued for a quantity of land consisting of several holdings belonging to different owners. It is thus often necessary to make separate awards for different portions of the land covered by a single declaration" (*See Executive Instructions, Government of Bengal Ch. V 554*). There is no objection to separate proceedings being taken in respect of separate holdings. It is, however, a different matter, where, as here, there is one holding. In such a case it does not seem reasonable to hold that there can be piecemeal acquisition. The Act refers only to one notice, one proceeding, and

one award to be given, taken and made regarding one holding and one ownership. *R. C. Sen* v. *Trustees for the Improvement of Calcutta,* 48 Cal. 893 : 33 C.L.J. 509 : 64 I.C. 577. But if the Collector was prevented from following that course by the decision of a Court of competent civil jurisdiction or by an order of injunction and proceedings were held up regarding portions of land declared for acquisition and proceedings had gone on as regards the rest it could not have been contended that the further proceedings were barred if and when the injunction was removed.

Award, when invalid :—An award must be *under the hand* of the Deputy Commissioner or the Collector specially authorised to make an award. An award, which instead of being in the hand of that officer, bears only his initial does not conform to the prrovisions of Section 11 of the Act and is therefore no award at all. Until an award is announced or communicated to the parties concerned, it cannot be said to be legally made. In the absence of a valid award the Civil Court has no jurisdiction to take any proceeding on reference made to it. *Macdonald* v. *Secretary of State,* 19 P.L.R. 1909 : 123 P.R. 1908 : 4 I.C. 914 ; *In Re Sukchand Gurmukhroy,* 11 Bom. L.R. 1176 : 4 I.C. 278. A Deputy Collector who was appointed an acquiring officer under the L. A. Act valued certain lands compulsorily acquired by Government and submitted a proposed award for approval to the consulting surveyor to Government through the Collector. It was however returned by him with the objection that the valuation was excessive. The Deputy Collector who had meanwhile been transferred to another part and succeeded in his office by an assistant Collector, adhered to his original valuation but remarked that as his proposed award had not been filed in the Collector's office and had not been declared to the parties interested, it could, if necessary, be reconsidered by the assistant Collector who had succeeded him. The Assistant Collector reconsidered the award, agreed to the lower valuation suggested by the consulting surveyor, had it approved by the Collector, and made it final and declared it to the parties. The claimants contended that the award made by the Deputy Collector in the first instance was the only valid award and that the second award made by the assistant Collector was not valid, *Held,* on the special facts of the case that the Deputy Collector had not made the award within the meaning of Section 11 of the L. A. Act. The mere signing of a document by an acquiring officer expressing his opinion as to the amount ot compensation to be offered to persons whose land is being acquired does not amount to the making of an award within the meaning of Section 11 of the L. A. Act and has no binding effect, where the officer does not intend the document to be

final. Some further formality is required in general principle before it becomes binding on Government and the formalities are prescribed by Section 12. *It must be filed* and so become a part of the office record, and then it shall be final and conclusive evidence between the Government and the parties interested. *Padmsi Narain* v. *Collector of Thana,* 46 Bom. 366: 28 Bom. L.R. 779: 64 I.C. 103; *Koaverbai Sorabji Manekji* v. *Assistant Collector, Surat,* 22 Bom. L.R. 1136.

Award, not an adjudication :—As between the claimants *inter se* an award by Collector under Section 11 of the L. A. Act does not amount to an adjudication of any question regarding the apportionment of compensation adjudged under the L. A. Act. Any such question can be determined only by the Civil Court. Where an award has been made by the Collector but has not been followed by a reference to the Civil Court under Section 18 of the L. A. Act, there has been no adjudication of the rights of the claimants *inter se,* and a claimant who appeared before the Collector when the award was made but yet did not apply for a reference under Section 18 of the L. A. Act can maintain against any person who may have received the whole or any part of the compensation awarded, a civil suit to establish his own claims to such compensation under the last proviso of Sub-section (2) of Section 31 of the L. A. Act. *Raja Nilmoney Singh* v. *Ram Bandhoo Roy,* 7 Cal. 388; *Sreemutty Punnabati Dai* v. *Raja Padmananda Singh,* 7 C.W.N. 538.

The award by itself is not evidence of the market value :—It has been held in *Re Land Acquisition Act (Act I of 1894) Cause, in the Matter of 1. Government of Bombay, 2 Karim Tar Mahomed,* I.L.R. 33 Bom. 325, that the award by itself is not evidence of the market value without considering all the evidence on which the award was founded.

Award conclusive against Government only :—It has been seen that throughout the proceedings, the Collector acts as the agent of the Government for the purpose of the acquisition clothed with certain powers to require the attendance of persons to make statements relevant to the matter inquired into. He is in no sense of the term a judicial officer nor is the proceeding before him a judicial proceeding, *Ezra* v. *Secretary of State,* 30 Cal. 36 7 C.W.N. 249: and their Lordships of the Judicial Committee in *Ezra* v. *Secretary of State,* 32 Cal. 605: 9 C.W.N. 454: 1 C.L.J. 227: 7 Bom. L.R. 422, observed that with regard to the second enquiry directed by the Act as to the value of the land taken thereunder the duty of the Collector under the section relating thereto is to fix the sum which in his best judgment is the value. His proceedings are administrative and not judicial and his award though *conclusive*

against the Government is subject to the landowner's right to have the matter referred to the Court. In *Padamsi Narain* v. *Collector of Thana,* 28 Bom. L.R. 779: 64 I.C. 103, Macleod C. J. observed that the mere signing of a document by an acquiring officer expressing an opinion as to the amount of compensation to be offered to persons whose land is being acquired does not amount to the making of an award within the meaning of Section 11 of the L. A. Act, and has no binding effect, where the officer himself does not intend the document to be final. Some further formality is required in general principle before it becomes binding on Government and the formalities are prescribed by Section 12. When the Collector appointed under the L. A. Act I of 1894 once makes the enquiry prescribed by the Act and reaches his own conclusions as to the amount of compensation to be awarded to the claimant, it is not competent to the Government to set aside the conclusion and to direct the Collector to substitute a smaller amount than that which, as a result of his enquiry, he has determined to offer. *Dessabhai Bejanji* v. *The Special Officer, Salsette,* 36 Bom. 599: 14 Bom. L.R. 592. Proceedings under the L. A. Act resulting in an award are administrative and not judicial and the award in which the enquiry results is merely a decision, *binding only on the Collector* as to what sum shall be tendered to the owner of the land, and if a judicial ascertainment of the value is desired by the owner he can obtain it by requiring the matter to be referred by the Collector to the Court under Section 18 of the L. A. Act, *Secretary of State* v. *Quamar Ali,* 16 A.L.J. 669: 51 I.C. 501.

The Collector's award under the L. A. Act is only a tender binding on the acquiring party and the claimants are not bound to accept it. *Gangadas Mulji* v. *Hajee Ali Mahammad,* 18 Bom. L.R. 826: 36 I.C. 433.

Objection to the Apportionment in the award :—In a proceeding under the L. A. Act a party who has raised no objection to the apportionment of the compensation made by the Collector must be taken to have accepted the award in that respect. *Abu Baker* v. *Peary Mohon Mukerjee,* 34 Cal. 451. The ordinary rule in a proceeding under the L. A. Act is that the party who has raised no objection to the apportionment of the compensation made by the Collector must be taken to have accepted the award in that respect, and such person, upon a reference made by some other party who considers himself aggrieved by the award of the collector, is not entitled to have it varied for his own benefit. In other words, the civil court is restricted to the examination of the question which has been referred by the collector for decision and the scope of the enquiry cannot be enlarged at the instance of parties

who have not obtained any order of reference. But the rule is inapplicable to a case where the scope and object of reference obtained by the aggrieved party was not to settle the question of apportionment as between himself and the other party who had raised no objection but merely to obtain a final benefit for both. *Bejoy Chand Mahatab* v. *P. K. Majumdar,* 13 C.L.J. 159.

Remedy of persons dissatisfied with the Collector's award :—In *Jogesh Chandra Roy* v. *Secretary of State,* 29 C.L.J. 53 the claimant being dissatisfied with the Collector's award, instead of applying to the Collector to make a reference under the provisions of Section 18 of the L. A. Act, instituted a suit for damages against the Secretary of State for India in Council for the value of the land which had been acquired by the Government. The Court held "that a suit of this sort does not lie. The Plaintiff had *ample remedy* by applying to the Collector to make a reference under Section 18 of the L. A. Act, and to have his rights adjudicated on by a Civil Court." Then it was contended that the authorities established that the plaintiff has a right of suit in a case like this and in deciding this question Fletcher J. held that "they do nothing of this sort. The authorities when properly read are clearly against the Plaintiff's contention. The two cases which are chiefly relied on, viz. the cases of *Mantharavudi Venkaya* v. *Secretary of State,* 27 Mad. 535 and *Rameswar Singh* v. *Secretary of State,* 34 Cal. 479: 11 C.W.N. 356: 5 C.L.J. 699 are clearly against the plaintiff's contention. All that those cases establish is this that where the Collector won't take up the matter and won't make an award, then in order that the plaintiff may not be deprived of his remedy, he may maintain a suit in the Ordinary Court for compensation which the collector declines to assess. These do not apply to the case where Collector had made an award and where the plaintiff has got a right of calling upon the Collector to refer the matter to the Civil Court under the provisions of Section 18 of the L. A. Act." In *Punnabati Dai* v. *Raja Padmanand Singh,* 7 C.W.N. 538, it was held that where an award has been made by the Collector but has not been followed by a reference to the Civil Court under Section 18 of the L. A. Act, there has been no adjudication of the right of claimants *inter se* and a claimant who appeared before the Collector when award was made, but yet did not apply for a reference under Section 18 of the Act, can maintain against any person who may have received a whole or part of the compensation awarded, a civil suit to establish his own claims to such compensation. This view has been expressly dissented from in *Saibesh Shandra Sarkar* v. *Bejoy Chand Mahatab,* 26 C.W.N. 506: 65 I.C. 711, in which some lands were acquired and the Collector after serving notice

under the L. A. Act upon the Zemindar and the Putnidar apportioned the compensation money half and half between them. Neither party applied for a reference under Section 18 and the Putnidar withdrew the amount awarded to him. The Zemindar thereupon brought a suit for recovery of the amount withdrawn by the Putnidar on the ground that under the putni Kabuliat the putnidar was not entitled to any compensation money ; held that the Zemindar having been served with notice under Section 9 of the Act was bound to apply for a reference under Section 18 when he was dissatisfied with the award, and *he cannot maintain a suit* in the ordinary Court to re-open the question. The Act creates a special jurisdiction and provides a special remedy. And ordinarily when jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive and the ordinary jurisdiction of the Civil Court is ousted, *Bhandi Sing* v. *Ramadhin Roy,* 10 C.W.N. 991 : 2 C.L.J. 20*n* ; *Stevens* v. *Jeacoke* (1848) 11 Q.B. 731 ; *West* v. *Downman* (1880) 14 Ch. D. 111 ; *Ram Chandra* v. *Secretary of State,* 12 Mad. 105. Under the third proviso to Section 31 (2) a person who was a party to the apportionment proceeding cannot reopen the question by a regular suit, *Soshi Mukhi Debya* v. *Keshab Lal Mukherjee,* 27 C.W.N. 809.

Award of Collector when to be final.

12. *(1)* Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

NOTES.

An award made by a Collector in the L. A. proceedings becomes final and binding only when it is filed under Section

12 of the L. A. Act, the mere signing of the award by the Collector does not make it conclusive. Before filing an award it is open to the Collector to destroy one which he has already signed and to substitute another in its place. *Kooverbai Sorabji* v. *Assistant Collector, Surat,* 22 Bom. L.R. 1136: 59 I.C. 429. The mere signing of a document by an acquiring officer expressing his opinion as to the amount of compensation to be offered to persons whose land is being acquired, does not amount to the making of an award within the meaning of Section 11 of the L. A. Act, and has no binding effect where the officer himself does not intend the document to be final. Some further formality is required on general principle before it becomes binding on Government and the formality is prescribed by Section 12. *It must be filed and so becomes a part of the office records* and then it shall be final and conclusive evidence between the Government and the parties interested; *Padamsi Narain* v. *Collector of Thana,* 46 Bom. 366: 28 Bom. L.R. 779: 64 I.C. 193. The actual payment of the compensation awarded is no part of the Collector's award and is not necessary to the completion of it; the award is complete as soon as the Collector apportions the amount of compensation between the parties concerned. *Miran Baksh* v. *Feroze Din,* 232 P.L.R. 1912: 17 I.C. 395.

Notice of the award:—Until an award is announced or communicated to the parties concerned it cannot be said to be legally made. In the absence of a valid award a Civil Court has no jurisdiction to take any proceeding on a reference made to it. *Macdonald* v. *Secretary of State,* 19 P.L.R. 1909: 123 P.R. 1908: 4 I.C. 914. Service of a notice under Section 12 (2) must be made, whenever practicable on the person named in the notice and when such person cannot be found, the notice must be served in the manner prescribed by Section 45 (3) of the Act. An award was passed under Section 12 (1) of the L. A. Act. Notice required by Section 12 (2) of the Act was served on the manager of an estate for which a Receiver had been appointed and there was nothing to show that the receiver had authorised the Manager to accept such notice on his behalf; held, that the service was not valid. Whether the provisions of the Civil Procedure Code relating to the service of summonses apply to the service of notices under the L. A. Act by virtue of Section 53 was quæried. *Papamma Rao Garu* v. *Revenue Divisional Officer, Guntur,* 42 I.C. 235. An award written or signed by the Collector without being made in the presence of or communicated to the applicant is *qua* the applicant no award at all and the period of limitation for filing an objection to the award can only be computed from the date when the award is made within the applicant's knowledge. *Haridas Pal* v. *The Municipal Board, Lucknow,* 16 O.C. 374.

Notice, immediate :—After directing in Sub-section (1) that the Collector's award, when made, shall be filed in his office, Section 12, sub-section (2) of the Act prescribes that "the Collector shall give *immediate* notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made." The next section which is material is Section 18 of the Act. It gives the party interested, who has not accepted the award, a right to require the Collector to make a reference to the Court, but it provides that the right must be exercised by the party within the period prescribed therein, viz. "within six weeks of the receipt of notice from the Collector under Section 12 (2) or within six months from the date of the Collector's award whichever period shall first expire." The word "notice in Cl. (b) of the proviso to Section (18) of the L. A. Act means notice whether immediate or not. The language of Cl. (b) of the proviso to Section 18 modifies or controls the language of Sub-section (2) of Section 12, or, what is more appropriate to say, which makes clear the intention of the legislature that a late notice may be given by the Collector as well as an immediate notice. Why, then, it may be asked, have the legislature imposed upon the Collector the duty of giving immediate notice" by Sub-section (2) of Section 12 of the Act? The answer to that is afforded by the purpose and the policy of the L. A. Act. If on the part of the Collector, there has been failure to give immediate notice of his award, and if the party interested in the award has suffered prejudice thereby, no doubt, that party would be entitled to insist that the notice should have been "immediate." But what prejudice can a claimant suffer from the mere fact that the Collector has given him no immediate notice?.........in any case the proceedings shall be final after six months from the date of the award. This evidently contemplates that a party interested should not sit quiet waiting for the Collector's notice or plead want of it, but should in any case himself be vigilant. The longer period of six months from the date of the award is given him as an alternative where the Collector has not been himself prompt. The lateness of the notice cannot, therefore, affect the question of limitation and no prejudice can possibly arise to the claimant in respect thereof.

If this consideration is borne in mind, it becomes plain that sub-section (2) of Section 12 provides that the Collector "shall give immediate notice" solely in the interests of the public with a view to ensure that the compulsory acquisition shall be in all respects facilitated and completed without delay. When that Sub-section directs that the Collector shall give "immediate notice" it does not confer a right upon the person

to such notice so as to entitle him to say that a late notice is bad, but it imposes a duty upon the Collector, in the interests of the public, to ensure prompt, vigorous action on his part for the speedy acquisition of the property and a speedy determination of all disputes, *In the matter of Government and Nanu Kothare,* 30 Bom. 275 : 7 Bom. L.R. 697.

Adjournment of enquiry.

13. The Collector may, for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

Power to summon and enforce attendance of witnesses, and production of documents.

14. For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure.[1]

NOTES.

These two sections empower the Collector to adjourn the enquiry from time to time and to compel the attendance of witness and the production of documents in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure to enable him not only to arrive at a fair valuation of the lands to be acquired but also in apportioning the compensation money amongst the persons interested. These provisions were found necessary in view of the fact that the L. A. Collector, as has been seen, acts as the agent of Government for the purposes of acquisition and is in no sense of the term a judicial officer nor is the proceeding before him a judicial proceeding. *Durga Das Rakshit* v. *Queen Empress,* 27 Cal. 820. His enquiry and his valuations are departmental in their character and made for the purpose of enabling the Government to make a tender through him to the persons interested. *Vide Notes under Section 11.*

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[1] *See* new Act 5 of 1908, Genl. Acts, Vol. VI.

The Collector not being a "Court" or a "Judicial Officer" has no right to compel the attendance of witnesses and the production of documents unless he is specially authorised on that behalf and in the absence of express legislation he would have been powerless to have the proper materials before him either for valuation or for apportionment of the compensation money. The Legislature, therefore, inserted the section with the following statement, viz. :—

"A question having been raised as to the competency of the Collector to summon the parties interested as witnesses under Section 14, we have thought it well to remove all doubt by inserting a specific reference to such parties in the section." *3rd Report, Select Committee, dated the 25th January 1894.*

Procedure of summoning of Witnesses and Production of documents. See Or. XVI C. P. C. V of 1908.

Matters to be considered and neglected.

15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

NOTES.

This Section lays down the procedure to be followed by the Collector in his enquiry as to the valuation of the land.

Duty of the Collector .—The Judicial Committee of the Privy Council in *Ezra* v. *Secretary of State*, 32 I.A. 93 : 32 Cal. 605 : 9 C.W.N. 545 : I.C. L.J. 227, has observed that with regard to the second enquiry directed by the Act as to the value of the land taken thereunder the duty of the Collector under the section relating thereto is to fix the sum which in his best judgment is the value. The Collector has under section 11, to enquire into the value of the land and into the respective interests of the persons claiming the compensation and after awarding a sum for compensation he has to apportion the compensation among all the persons known or believed to be interested in the land of whom or of whose claim he has information. *In the Matter of Pestonji Jahangir*, 37 Bom. 76 : 14 Bom. L.R. 507 : 15 I.C. 771. His ultimate duty is not to conclude by his so-called award but to fix the sum which in his best judgment is the value and should be offered. *Ezra* v. *Secretary of State*, 32 I.A. 93 : 32 Cal. 605 : 9 C.W.N. 454 : 1 C.L.J. 227).

His limited jurisdiction :—The L. A. Act gives an acquiring officer very wide discretion as to the scope of enquiry

and as to the materials which he may take into consideration. It requires him to make an award as to the matters mentioned in Section 11 and to have regard to the provisions of Sections 23 and 24 in determining the amount of compensation as laid down in Section 15, *Padamsi Narain* v. *Collector of Thana*, 28 Bom. L.R. 779: 64 I.C. 103. Sections 11, 15 and 23 must be read with Sections 30 and 31, *Government of Bombay* v. *Esuffali Salebhoy*, 12 Bom. L.R. 34: 5 I.C. 621. The matters to be considered by the Collector, in determining the market value of the land acquired, are the same as are to be considered by the Court and the matters to be considered both by the Collector and the Court are laid down in Sections 23 and 24. The intention of Section 23 taken as a whole is to provide complete indemnity to a person whose land is complsorily acquired. The sub-clauses give effect to this principle by enumerating the heads under which the compensation may be awarded, *Baroda Prosad Dey* v. *Secretary of State*, 25 C.W.N. 677. In determining the amount of compensation he is ordered to take into consideration the matters mentioned in Section 24 of Act X of 1870, now section 23 of Act I of 1894, one of which is the market value at the time of awarding the compensation of the land. It is, therefore, obvious that the offer of one rupee compensation was not in accordance with the duty of Collector under this section, and it would be altogether wrong to treat one rupee as the amount of compensation determined under section 13, now section 11 *Luchmeswar Sing* v. *Municipality of Darbhanga*, 18 Cal. 99.

Matters to be Considered in Determining the Market—Value of the land. *See notes under Sections 23 and 24 Post.*

Taking Possession.

16. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

Power to take possession.

17. *(1)* In cases of urgency, whenever the Local Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice

Special powers in cases of urgency.

mentioned in section 9, sub-section *(1)*, take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a riverside or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after publication of the notice mentioned in sub-section *(1)* and with the previous sanction of the Local Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sus-

tained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(4) In the case of any land to which, in the opinion of the Local Government, the provisions of sub-section *(1)* or sub-section *(2)* are applicable, the Local Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section *(1)*.

NOTES.

Right of Entry:—In the case of compulsory taking, the right of entry under Section 85 of the Land Clauses Act 1845 is a right not independent of but consequent upon the landowner and the promoters being placed, by the notice to treat, in a position analogous to that of a vendor and purchaser. *Tiverton Rail Co.* v. *Loosemore,* (1884) 9 App. Cas. 408.

Select Committee Report:—"Section 8 of the Bill amends Sec. 16 of the Act by requiring the Collector to take possession of the land immediately he has made the award, with a proviso permitting him to leave the occupants in occupation until possession of the land is required, upon such conditions as he and they may agree upon. We prefer the terms of the existing law, which leave to the Collector discretion as to immediate entry upon the land, and have changed section 8 of the Bill accordingly. Where the Collector postpones entry for any reason, he will ordinarily do so, as at present, on terms adjusted with the occupants ; and in a later section we have provided for compensation to the occupant if his profits should be in any way *bona fide* reduced in the period between declaration under Sec. 6 and the Collector's entry into possession."

"In Section 17 of Act, which regulates the powers of the Collector in cases of urgency, we think that the special damage for which the persons interested are to be compensated should

be expressly defined as the damages incident to such sudden dispossession, and have by section 9 of the Bill added some words to the section accordingly."—*Select Committee Report*, dated, 2nd February, 1893.

"In Section 17 we have introduced a sub-section permitting a shorter procedure under the direct orders of the Government in those cases where sudden changes in the course of a river require new land to be immediately taken for the convenience of the traffic or a railway.

We may explain, in answer to a criticism by the Board of Revenue, Lower Provinces, that power was given to the Collector in section 17 to give special damages for sudden dispossession in order to cover injuries which sudden dispossessions constantly entail. If, for instance, an owner is suddenly deprived of a pasture meadow, the market value of the meadow may not represent the actual amount of his loss. It may be impossible to find fresh pasture for his cattle in the emergency except at special charges. We thing it right that the Collector should be empowered whenever he deprives a man suddenly of his land, to meet liberally the exceptional expenses to which the owner may be put." *Select Committee Report*, dated, 23rd March 1893, *Gazette of India*, Part V, 1894.

Scope of Secs. 16 and 17 :—Section 16 deals with taking possession of the land by the Collector *after award* and Sec. 17 deals with taking possession of the land by the Collector *before award* in case of urgency only. Neither Sec. 16 nor Sec. 17 is applicable to the case of temporary occupation of the land under Part VI of the Act, as the proprietory right in the land taken up under these sections vests absolutely in the State. It is also necessary in regard to Sec. 17 to observe that it applies to "waste" and "arable" lands only and not to lands occupied by roads, tanks, buildings, gardens, orchards etc. *Board's Instructions, 103*, Bengal Land Acquisition Manual, 1910, p. 89.

Payment of Compensation not necessary :—When an award has been made, possession of the land (if not already taken under Sec. 17 of the Act) can be taken at once and need not be deferred till the compensation is paid. *Madras Board's S. O. 90 (14)*. The actual payment of the compensation awarded is no part of the Collector's award and is not necessary to the completion of it, *Miran Baksh* v. *Feroze Din*, 232 P.L.R. 1912 : 17 I.C. 395.

Possession of the Land :—The Collector under the L. A. Act I of 1894, as has been seen, has only a limited jurisdiction. He is bound by the official declaration in the Local Official Gazette. The Collector cannot acquire or give possession of any land *beyond* the boundaries given in the declaration. If he does so he commits an act of trespass. He has to find out the precise

quantity of land notified for acquisition within specified boundaries given in the declaration, value the same under the provisions of the Act and give possession accordingly. If the Local Government committed a mistake by giving an erroneous boundary the Collector cannot cure the mistake. If the land acquired be for government purposes and if the Government takes possession of the land beyond the limits prescribed by the declaration or in excess of the area for which compensation is paid, it trespasses on private lands and is liable under the law of the country ; and so is a company if the acquisition is for its purposes. But such excess land cannot be valued and compensation awarded for it under the provisions of the Act. *Harish Chandra Neogy* v. *The Secy. of State,* 11 C.W.N. 875. When Land actually taken up by Government is different from that mentioned in the declaration issued under the L. A. Act, the proceedings of the Collector are void and there can be no valid reference to the Civil Court. *Gajendra Saha* v. *Secy. of State,* 8 C.L.J. 39.

Conditions precedent to taking possession under Sec. 17 :—In cases of urgency with the previous sanction of the Local Government the Collector can take possession under Sec. 17, of any waste or arable land. Before taking possession under Sub-Sec. (1) Sec. 17, the following preliminaries must be observed :—

(1) The declaration under Sec. 6 must have been published.
(2) The land must have been marked out and measured under Section 8.
(3) A General notice under Sec. 9 (1) must have been published.
(4) There must be fifteen clear days between the publication of the General notice under Sec. 9 (1) and the taking possession of the land. *Bengal L. A. Manual 1910,* p. 15.

Obstruction to the Delivery of Possession :—Section 47 directs that if the Collector is opposed or impeded in taking possession under this Act, of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector. The penalty for offering resistance to the taking of any property by the lawful authority of the Public servant is also provided by Ss. 183 and 186 of the Indian Penal Code.

Effects of taking possession by the Collector :—The first effect in taking possession of the land by the Collector

under the provisions of the L. A. Act is that the Government cannot withdraw from the acquisition of any land except in the case provided for in S. 36 (temporary occupation). S. 48 provides that except in the case provided for in S. 36, the Government shall be at liberty to withdraw from the acquisition of *any land of which possession has not been taken.*

The second and the most important legal consequence that follows upon taking possession of the land by the Collector under the provisions of the L. A. Act, is that it *vests absolutely in the Government free from all encumbrances* that is to say no person shall have any right to pursue his remedies against the land in the hands of the Government or the Company for whom it is acquired under the provisions of the L. A. Act I of 1894. This is an instance of the exception to the general rule that "a transfer of property passes forthwith to the transferee of the *interest which the transferor is then capable of passing* in the property and the legal incidents thereof. Such incidents include, when the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer and all things attached to the earth," (Section 8 of the Transfer of Property Act IV of 1882) which is equivalent to the well-known maxim "That a transferor cannot confer greater title to the transferee than he himself had in the same." This principle does not apply in the case of lands acquired by the Government under the provisions of the Land Acquisition Act I of 1894. It should be borne in mind that what has to be acquired in every case under the L. A., Act is the *aggregate* of rights in the land and not merely some subsidiary right such as that of a tenant, *Babujan* v. *Secretary of State,* 4 C.L.J. 256. The correct rule of valuation to be observed is to value the land in the first instance *including all interests in it, Raja of Pittapuram* v. *Revenue Divisional Officer, Coconada,* 42 Mad. 644: 36 M.L.J. 454: 51 I.C. 656. In *Collector of 24 Parganas* v. *Nobin Chunder Ghose,* 3 W.R. 27, the High Court observed that "The Railway Company with the aid of Government, acquired the land under the provision of the L. A. Act VI of 1857; and by the 8th section of that Act, the land taken became vested in the Government, and afterwards in the Railway Company, absolutely, and free from every right or interest therein, of whatever description, possessed by former proprietors or other persons. All rights before existing whether of passage or of any other kind, absolutely ceased upon the acquisition of the land by the Railway; and no right of way afterwards arose, or was continued, merely because there remained no mode or access to the land on the north, otherwise than by crossing the line. The express provisions of the law are not consistent with the existence of such rights" under

S. 16 of the L. A. Act. When the Collector made the award, he could take possession of the land which thereupon vested absolutely in the Government free from all encumbrances; and the acquisition and the resulting vesting is equally effective and complete in the case of acquisition undertaken by the Government on the application of the Municipal Commissioners of the city of Bombay Municipal Act so as to vest the property in the corporation instead of in the Government on the payment of compensation awarded; and that no transfer from the Government to the Corporation was needed, *Municipal Commissioners for the City of Bombay* v. *M. Damodar Brothers,* 45 Bombay 725.

Land once Vested cannot be Divested:—When the Collector makes an award under section 11 of the L. A. Act and then takes possession of the land, the effect under Section 16 is that the land vests absolutely in the Government free from encumbrances and that a subsequent offer by a late owner to make a gift of the land to Government, abandoning the right to compensation, although accepted by Government, did not amount to a re-vesting of the land in the late owner as on a withdrawal under section 48; *Secretary of State* v. *The Chettyar Firm,* 4 Rangoon 291: 98 I.C. 323.

Scheme of the Act:—What has to be acquired in every case under the L. A. Act is the *aggregate* of rights in the land and not merely some subsidiary right such as that of a tenant, *Babujan* v. *Secy. of State,* 4 C.L.J. 343; *Raja Shyam Chandra* v. *Secy. of State,* 12 C.W.N. 569: 7 C.L.J. 445. Jenkins C. J., in *The Collector of Belguam* v. *Bhimroo,* (1908) 10 Bom. L.R. 657 observed that "The Court must proceed upon the assumption that it is the particular piece of land in question that has to be valued *including all interests in it.* In *Bombay Improvement Trust* v. *Jalbhay,* 33 Bom. 483, it is observed that "Reading the Act as a whole I can come to no other conclusion than that it contemplated the award of compensation in this way: *First,* you ascertain the market value of the land on the footing that all separate interests combined to sell, and *then* you apportion or distribute that sum among the various persons found to be interested." The antithesis between "land" and "an interest in land" is well marked in Sec. 31 (3). The distinction is preserved throughout the Act where land is always used to denote the physical object, which is after all the thing that has to be acquired. Provision is made for compensaton to all persons interested but claims on this head are to be adjusted in the apportionment prescribed under sections 29 and 30 and do not fall to be considered till after the Court has determined the market-value of the land under sec. 23 (1). The value of the land cannot and ought not to be determined independently of the huts standing thereon, *Secretary of State* v. *Belchambers,* 3 C.L.J. 169. Where there is one holding, there cannot be

piece-meal acquisition as the L. A. Act refers only to one notice, one proceeding and one award to be given and made regarding one holding and one ownership, *R. C. Sen* v. *Trustees for the Improvement of Calcutta,* 48 Cal. 893 : 33 C.L.J. 509 : 64 I.C. 577.

When no title vests in the Government :—If the provisions of the L. A. Act are not strictly complied with but are made a cloak for attempting to obtain an indefeasible title under the guise of a public purpose, the proceedings do not operate towards the creation of a valid title to the land in Government. *Luchmeswar Sing* v. *Chairman, Darbhanga Municipality,* 18 Cal. 99 ; *Ponnaia* v. *Secy. of State,* 97 I.C. 471 : (1926) A.I.R. (M) 1099.

Encumbrance includes Easements –The word "encumbrance" in Sec. 16 of the L. A. Act includes easements. Where, therefore, land is acquired by Government under the provisions of the L. A. Act, the land vests absolutely in the Government under Sec. 16 of the Act free from all existing easements. Nor can any fresh easements arise in respect of the land acquired by virtue of the severance of such land from other lands belonging to the persons from whom the land has been acquired. Where a person, a portion of whose land has been acquired by Government under the provisions of the L. A. Act, has been awarded compensation, in respect of the severance of the land acquired from other land belonging to him, he cannot claim to have a right of way over the land acquired as an easement of necessity, *Mitra* v. *Municipal Committee, Lahore,* 6 Lah. 329 : 89 I.C. 658 : (1925) A.I.R. (Lah.) 523. Land taken under the Act is taken discharged of all easements and the loss of easement must be taken into account in assessing compensation for injurious affection, *Taylor* v. *Collector of Purnea,* 14 Cal. 423.

Encumbrance Includes Leases and Under-leases :—On the compulsory acquisition of premises the lease thereof terminates and on such determination of the lease the monthly tenancies of the under-lessees also come to an end with the result that the under-lessees thereafter remain on the premises merely as tenants on sufferance and are not entitled to a month's notice, *Municipal Commissioners for the City of Bombay* v. *V. M. Damodar Brothers,* 45 Bom. 725.

Encumbrance Includes a Mortgagee's Lien :—The mortgage lien of a mortgagee of a property acquired under the L. A. Act does not follow with the lands in the hands of Government by whom it is acquired or into the hands of the Company for whom it is acquired. The lien is transferred to the compensation money into which the property is converted and the Government or the Company for whom the land is acquired gets it free from the lien of a mortgagee ; *Jatoni Chowdhurani* v. *Amar*

Krishna Saha, 13 C.W.N. 350 : 6 C.L.J. 745. In England when money was paid into Court under the compulsory power of Sec. 69 of the Land Clauses Act (1845) as compensation for lands taken which were settled etc. etc., or subject to encumbrances, *Steward V. C.*, said :—"I think where money has been paid into by reason of the real estate having been taken under the compulsory powers, it remains in Court, and is to be held as money or personal estate in the hands of the Court *impressed with the trusts* of real estate." Again he said : "The money in Court is to be considered for the purpose of the question as to who was entitled to it, real estate," *In Re Stewart's Trust,* 22 L.J. (N. S.) 369. The land when acquired under the L. A. Act is vested in and in the possession of the Government discharged of all encumbrances therefrom. The rights of parties to the land and to any mortgage on or interest in it are transferred to the compensation money. The money paid into the treasury is to be considered as money or immoveable property impressed with the trusts and obligations of the immoveable property which it represents, *Venkata Viraragavayyangar* v. *Krishnaswami Aiyangar,* 6 Mad 344. When property subject to a mortgage is acquired by Government under the L. A. Act and the whole compensation amount is paid to the mortgagor without notice of the mortgage, the mortgagee may claim a reference under Section 18 to the Civil Court and after the expiration of six months, he is confined by the Act to a suit under Section 31 against the persons to whom the money was wrongly paid. There is no other remedy at all either against the Secretary of State or the L. A. Collector, *Secretary of State* v. *Euppusami Chetty,* 46 M.L.J. 36 : 1924 M.W.N. 138 : 78 I.C. 82 : (1924) A.I.R. (M) 521.

Encumbrance Includes Widow's Interest :—Where land which was taken up by Government under the L. A. Act for public purposes was held at the time by two widows holding the usual Hindu Widow's life estate therein, it was held that the compensation awarded for such land should not be paid over to the widows but should be invested in land to be held on similar terms *Sheoratan Rai* v. *Mohri,* A.W.N. (1899) 96 : *Sheo Prosad Singh* v. *Jalcha Kanwar,* 24 All. 189.

Notice Immaterial :—Under Section 16 of the L. A. Act the making of an award and taking possession of land thereunder vests the property absolutely in the Government and the mere fact that notice has not been served on the occupier of the land in accordance with Section 9 (3) and 45 of the Act does not render the award or subsequent proceedings void nor does it prevent the vesting of the property in Government, *Kasturi Pillai* v. *Municipal Council, Erode,* 43 Mad. 280 : 37 M.L.J. 618 : 26 M.L.T. 268 : 10 L.W. 336 : 53 I.C. 646.

Remedy of a person whose claim overlooked :—The remedy of a complainant who has had notice of an award under Section 12 of the Land Acquisition Act is to apply for a reference under Section 18. No other remedy is provided by the Act, *Kasturi Pillai* v. *Municipal Council, Erode*, 43 Mad. 280: 37 M.L.J. 618: 26 M.L.T. 268: 10 L.W. 336: 53 I.C. 646. The L. A. Act creates a special jurisdiction and provides a special remedy and ordinarily when jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy, such jurisdiction is conclusive. Where by an Act of the Legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of injury is pointed out by the Statute, the ordinary jurisdiction of the Civil Court is ousted and in case of injury the party cannot proceed by action. The proviso to Section 31 (2) which provides that nothing shall affect the liberty of any person who may receive the whole or any part of the compensation awarded under this act to pay the same to the person lawfully entitled thereto is of limited application and applies only to cases where the person is under a disability or *is not served with notice of the proceedings before the Collector*. Where a person has no notice of the apportionment proceedings under the L. A. Act he cannot be bound by the award, *Shaibesh Ch. Sirkar* v. *Bejoy Chand Mahtab*, 26 C.W.N. 506: 65 I.C. 711. A person claiming a portion of the compensation awarded by the collector in L. A. proceedings is entitled to maintain a civil suit to establish his claims, where the question of apportionment of the compensation money *has not been* determined by the Collector, *Chandu Lal* v. *Dadli Begum*, 18 P.W.R. 1919: 49 I.C. 657.

This view is quite in accord with the view in England, where Promoters, who have entered on land in accordance with provisions of Section 85 of the Land Clauses Act (1845), are protected by their statutory powers and no action for the recovery of such lands can be brought against them by the owner ; *Doe d. Armistead* v. *North Stafford Rail Company*, (1851) 16 Q.B. 526 ; *Doe d. Hudson* v. *Leeds and Bradford Rail Company*, (1851) 16 Q.B. 796 ; *Worsley* v. *South Devon Rail Company*, (1851) 16 Q.B. 539. Such owners are not entitled to any equitable relief, but must avail themselves of the procedure provided in Sections 22, 68 and 121 of the Land Clauses Act (1845). *Tiverton Rail Company* v. *Loosemore*, (1844) 9 App. Cas. 480 ; *Adams* v. *London & Blackwell Rail Company*, 19 L.J. Ch. 557. If the promoters do not strictly comply with the provisions of Section 85, they are in the position of trespassers and can be proceeded against as such. *Perks* v.

Wycombe Rail Co., (1862) 3 Giff. 662: 10 W.R. 788; and the High Court has power, on the trial of an action for wrongful entry, to make a declaration as to the plaintiff's interest in the land in question instead of remitting them to the procedure under the Land Clauses Act (1845), *Burmingham & District Land Company* v. *London & N. W. Rail Company,* (1888) 36 Ch. D. 650.

Remedy when Collector Refuses to Award :—If, after having taken possession of the land under Section 17, before Award, the Collector subsequently refuses to give an award on the ground that the land belonged to the Government, a suit would lie for a declaration that the land belonged to the plaintiff and for damages for breach of statutory duty on the Collector's part. The land having vested in the Government absolutely the plaintiff were not entitled to recover possession but could only claim damages for breach of statutory duty on the part of the Collector, *Mantharavadi Venkayya* v. *The Secretary of State,* 27 M. 535.

Limitation Applicable for such a Suit :—The suit contemplated by Art. 18, Limitation Act is one for compensation for non-completion and that does not apply to a case in which the land has vested in the Government. Art. 120 governs the suit. A suit to recover compensation for land acquired, instituted on the refusal of the Collector to award any compensation under the L. A. Act, is governed by Art. 120 of the Schedule II of the Limitation Act, the right to sue accruing either from the date of acquisition or the refusal by the Collector to award compensation, *Rameswar Sing* v. *Secretary of State,* 34 C. 470: 11 C.W.N. 356: 5 C.L.J. 669.

Compensation for Sudden Dispossession :—Section 85 of the Land Clauses Act (1845) provides for the amount to be deposited if the promoters are desirous of entering upon and using lands before an agreement shall have been come to or an award made or verdict given for the purchase money or compensation to be paid by them in respect of such lands. It is also provided that in assessing the amount to be deposited under Section 85, a surveyor should take into consideration not only the actual value of the land taken but also the amount of compensation to which an owner is entitled for severance or other injuries done to land held therewith, *Field* v. *Carnarvon and Llanber's Rail Co.*, (1868) 5 Eq. 190. To the same effect is Section 6 of the Railway Clauses Act 1845 which enacts that the Company should make to the owners and occupiers of land and all other parties interested in any lands taken or used for the purposes of the Railway or injuriously affected by the construction thereof full compensation for the value of the lands so taken or used, and for all damage sustained by such

owners, occupiers and other parties by reason of the exercise of the powers by that or the special Act or any Act incorporated therewith vested in the Company.

From the Select Committee Report, dated 2-2-1893, it will appear that the Indian Legislature, in passing the Land Acquisition Act I of 1894, had in view the principle of assessing damages as followed in Englad. It expressly states in Section 17 of the Act which regulates the powers of the Collector in cases of urgency—"We think that the special damage for which the persons interested are to be compensated, should be expressly defined as the damages incidental to such sudden dispossession, and have by Section 9 of the Bill added some words to the section accordingly.........we may explain, in answer to a criticism by the Board of Revenue L. P. that power was given to the Collector in Section 17 to give *special damages* for sudden dispossession in order to cover injuries which sudden dispossessions constantly entail. If, for instance an owner is suddenly deprived of a pasture meadow the market value of the meadow may not represent the actual amount of his loss. It may be impossible to find fresh pasture for his cattle in the emergency except at special charges. We think that the Collector should be empowered whenever he deprives a man suddenly of his land, to meet liberally the exceptional expenses to which the owner may be put." *Select Committee Report,* 23-3-93 ; Gazette of India, Part V, 1894.

Section 23 Sub-section 1 Cl. (2) applies to the case provided for in Section 17 when the Collector takes possession before award, *Sub-Collector, Godavary* v. *Seragam Subbarayadu,* 30 Mad. 151 : 16 Mad. L.J. 551.

Objection as to the amount of damages offered :—In case the value of the land, crops and trees offered by the Collector for taking possession of the land on the ground of urgency before award, be not accepted as sufficient, the matter will have to be decided by reference under Sections 18 and 19 (c).

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

INTRODUCTION.

A careful consideration of the scheme and language of Part III of the Act leads to the conclusion that the act of the Collector in making and in refusing to make a reference under

Section 19 is a judicial act. It cannot be denied that the proceedings under Part III which result in an award of the Court are judicial proceedings and by virtue of Section 54, the Court is subordinate to the High Court. Sections 18 and 19 provide for the procedure to be adopted to initiate those proceedings. Ordinarily a proceeding is commenced in a Court of law by the presentation of a plaint or a petition to it, but the L. A. Act has adopted a somewhat different method, viz. the presentation of the application to the Collector. If the requirements of Section 18 are complied with, the Collector has no option but to make the reference and in doing so, in addition to the statements to be sent by him under Section 19 (1) he has to attach a Schedule of the particulars of the notices served and of the statements made by the parties. The objection petition itself is forwarded to the Court. The limitation fixed under Section 18 has also reference to the filing of the objection petition. It seems clear, therefore, that the proceedings which culminate in the Court's award, commences with the filing of the application under Section 18. As soon as it is filed the matter of the amount of proper compensation assumes a litigious form and becomes a contentious proceeding between the owner and the Collector. It was held by Chandravarkar J. in *Re L. A. Act in re Rustomji Jijibhai*, 30 Bom. 341 that the application under Section 18 is in the nature of a plaint in a suit. It is the first step in the judicial proceedings and is an integral part of it. It follows therefore that if the Collector decides to reject it or passes any orders regarding it, he does so judicially and not administratively, for a judicial proceeding once commenced cannot be affected by administrative action. The question that the Collector may have to decide under Section 18, viz. whether the applicant is a person interested within the meaning of the Act, whether the application is in proper form and whether it is in time, are all questions that have to be decided judicially. *Parameswar Aiyar* v. *L. A. Collector Palghat*, 42 Mad. 231; *Administrator General Bengal* v. *The Collector 24 Purganas*, 12 C.W.N. 241.

Reference to Court.

18. *(1)* Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons

to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,—

(*a*) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(*b*) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (*2*), or within six months from the date of the Collector's award, whichever period shall first expire.

NOTES.

Nature of Collector's Enquiry and Award :—We have seen (*vide* Notes under S. 11) that the L. A. Collector is merely the agent of Government for the purposes of acquisition and is in no sense of the term a judicial officer nor is the proceeding before him a judicial proceeding, *Durgadas Rakshit* v. *Queen Empress,* 27 Cal. 820. His enquiry and his valuations are departmental in their character and made for the purpose of enabling the Government to make a tender through him to the persons interested. Therefore, the fact that in such a proceeding the Collector did not sufficiently consider the evidence produced by the owner of the land and that he formed his opinion on materials which were not before him as evidence would not render the proceedings improper. If the owner doubted the correctness of his valuation, his remedy lay in demanding a reference to a Civil Court under Section 18 of the Act, *Ezra* v. *Secretary of State,* 30 Cal. 85: 7 C.W.N. 249. The Privy Council in appeal held that with regard to the enquiry directed by the Act as to the value of the land taken thereunder the duty of the Collector under the section relating thereto, is to fix the sum which, in his best judgment, is the value. His pro-

ceedings are administrative and not judicial and his award though conclusive against the Government is subject to the landowners' right to have the matter referred to the Court, *Ezra* v. *Secretary of State,* 32 Cal. 605 : 32 I.A. 93 : 9 C.W.N. 455 : 1 C.L.J. 227 (P. C.).

Suit against award:—Whenever a question of title arises between rival claimants, it must under the terms of the L. A. Act, be decided in the case and cannot be made the subject of a separate suit, *Babujan* v. *Secretary of State,* 4 C.L.J. 256. When statutory rights and liabilities have been created and jurisdiction has been conferred upon a special Court, for the investigation of matters which may possibly be in controversy such jurisdiction is exclusive and cannot concurrently be exercised by the ordinary Courts, *Maharaja Sir Rameswar Sing* v. *Secretary of State,* 34 Cal. 420 ; *Bhandi Singh* v. *Ramadhin Roy,* 10 C.W.N. 991 : 2 C.L.J. 20*n*. It is to be observed, however, that the Collector under Act X of 1870 had no power to decide the question of apportionment in any case. Whenever there was any question of apportionment he was bound to refer the matter to the Court i.e. the Civil Court and the Civil Court had to decide the matter under Ss. 38 & 39 of the Act. This appears to be the reason why their Lordships in *Raja Nilmoney Singh's Case* (7 Cal. 338) referred to the adjudication under Sections 38 and 39. Under Act I of 1894, compulsory reference was abolished and the Collector has full power to deal with the question of apportionment under Section 11 and his award, subject to the other provisions of the Act, is final under S. 12, no doubt, as between the Collector on the one hand, and the persons interested on the other. The person aggrieved by the award, whether his objection be to the measurement of the land, the amount of compensation, the person to whom it is payable or the apportionment of the compensation among the persons interested may apply to the Collector for reference to the Court. The "Court" by which is meant the principal Civil Court of Original jurisdicton or a judicial officer specially empowered to perform the functions of the Court, under the Act has to decide the questions referred to the Court. That being so, it is not reasonable to hold that the Act, while creating a special Court to decide such questions intended an adjudication of any question relating to apportionment by the ordinary Civil Court. It cannot be held that a suit lies notwithstanding a reference to the Court upon the application of a party under S. 18 or by the Collector of his own motion under Section 30, *Saibesh Chandra Sirkar* v. *Sir Bejoy Chand Mahtap,* 26 C.W.N. 506. And in the same case it has been laid down that the Act creates a special jurisdiction and provides a special remedy. And ordinarily when jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly

be in controversy, such jurisdiction is exclusive. It is an established principle that where by an Act of the Legislature powers are given to any person for a public purpose from which an individual may receive injury if the mode of redressing the injury is pointed out by the statute, the ordinary Jurisdiction of Civil Court is ousted and in the case of injury the party cannot proceed by action, *Stevens* v. *Jeacocke*, 11 Q.B. (1848) ; *West* v. *Downman*, L.R. 14 Ch. D. 111 (1880) ; *Ram Chandra* v. *Secretary of State*, 12 Mad. 105 ; *Shoshi Mukhi Debya* v. *Keshab Lal Mukherjee*, 27 C.W.N. 809.

Remedy of a person dissatisfied with the Collector's Award :—The "Award" (of the Collector) in which the enquiry results is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owner of the lands ; and that, if a *judicial* ascertainment of the value is desired by the owner he can obtain it by requiring the matter to be referred by the Collector to the Court, *Ezra* v. *Secretary of State*, 32 Cal. 505 ; *Secretary of State* v. *Quamar Ali*, 16 A.L.J. 669 : 51 I.C. 501. Section 12, provides that the award shall be final and conclusive, whether the persons interested have appeared or not as to the question which can be dealt with by the Collector under S. 11 subject to the *right* of the party to require a reference to the Court under Sec. 18. The declaration made by the Government under Sec. 6 is conclusive evidence that the land is needed for the purposes sanctioned by the Act. All that the parties interested can urge before the Collector is that the area of the land is not properly stated, the compensation proposed is insufficient and the amount has been wrongly divided amongst them. *The only remedy of a person interested who is dissatisfied with the Collector's award is to apply for a reference under Sec. 18 and no other remedy is provided by the Act*, *Kasturi Pillai* v. *Municipal Council, Erode*, 43 Mad. 280 : 53 I.C. 646 : 10 L.W. 336 : 26 M. L.T. 268 : 37 M.L.J. 618.

Classes of Reference :—The Act provides for two classes of reference to the judge and the judge can decide only those things which arise out of these references. The first class of reference is to award compensation under S. 15 of Act X of 1870 (now section 18 of Act I of 1894), the second class of reference is for apportionment of compensation under S. 38 (now section 30). The result is that the Court has power under proper references to decide (1) what compensation shall be awarded, and (2) to whom it shall be paid, *E. Taylor* v. *Collector of Purnea*, 14 Cal. 423. The Act confers only a special and limited jurisdiction to a judge to deal with the two classes of questions viz. the award of compensation and its apportionment among several claimants. *Ramalakshmi* v. *The Collector of Kistna*, 16 Mad. 321.

Who can Claim a Reference :—Any person *claiming* an interest in the compensation money, whether he has or has not an interest in the land acquired, is entitled to ask for a reference and appear in support of it. Some land in which one B. owned a Mouroshi Mokurari tenant's interest was acquired by Government. Previous to the declaration of the acquisition one G. had entered into a contract with B. Notice of the acquisition under Section 9 of the Act was served, amongst others, on G. G alone appeared before the Collector, and on the award being made, applied for a reference under Section 18 on the ground that the amount awarded, was insufficient. The Collector made the reference asked for. Until the date of declaration no conveyance of B's interest in the land had passed in favour of G. But sometime after the award and the order of reference, B purported to convey all the interests he could claim on account of the land to G. The L. A. Judge held, that under the circumstances, G. had no *locus standi* to contest the sufficiency of the award ; *held,* that no question of apportionment having arisen, the question whether G. had an interest such as would entitle him to any portion of the compensation money, was a matter foreign to the proceeding at the stage. The fact that G had *claimed* an interest in the compensation money and the Collector had thought that he was a person who could come in as *claiming* an interest was sufficient to entitle him to ask for a reference and to appear in support of it. *J. C. Galstaun* v. *Secretary of State,* 10 C.W.N. 195. In *Ranee Hemunta Kumari* v. *Hari Charan Guha,* 5 C.L.J. 301 it was contended that the dispute being between two persons having *conflicting* claims, no reference lies under Section 18. It was suggested that Section 18 contemplates references only in the case of various persons interested in various capacities such as landlords, tenure-holders and tenants and does not cover the case of persons who have conflicting claims as landlords ; *held,* that the question, though at first sight appears to be foreign to the matters ordinarily to be determined by a Court sitting to decide a reference under the L. A. Act, still having regard to Sections 18 and 3 of the Act there can be no doubt that the Court had jurisdiction to hear the references. In this case dispute is with reference to the persons to whom the compensation is payable and it is made by a person who claims to be interested as landlord in the land acquired. Section 18 read with Section 3 (b) of the Act enables *any person claiming an interest in the compensation,* who has not accepted the award, to require a reference to the Court: it is no part of the Collector's duty to decide whether the claim is well founded and he is ***not authorised to refuse to make the reference merely because he thinks that the claim is not well founded.*** ***T. K. Paramessware Aiyar*** v. ***L. A.***

Collector of Palghat, 42 Mad. 201 ; *Administrator General of Bengal* v. *L. A. Collector, 24 Parganas*, 12 C.W.N. 241. It should be noted, however, that any person interested in S. 18 does not include the Secretary of State for India in Council. *Secretary of State* v. *B. I. S. N. Coy.*, 15 C.W.N. 848 : 13 C. L.J. 90.

What is reference :—There is no provision in the law for an appeal from the Collector's award. His award becomes final unless objected to with the proviso that any person dissatisfied may require the Collector to send the case to the Civil Court for the judicial determination of the compensation payable for the land acquired and also the apportionment thereof.

Under the L. A. Act X of 1870 repealed by Act I of 1894 the Collector had no power to decide the question of apportionment in any case. Whenever there was any question of apportionment, he was bound to refer the matter to the Court, i.e. the Civil Court, and the Civil Court had to decide the matter under Sections 38 and 39 of the Act. This appears to be the reason why their Lordships in *Raja Nilmoney Singh's case* (7 Cal. 388) referred to the adjudication under Sections 38 and 39. Under Act I of 1894 compulsory reference was abolished and the collector has full power to deal with the question of apportionment under Section 11 and his award, subject to other provisions of the Act, is final under Section 12, no doubt, as between the Collector, on the one hand and the person interested, on the other. The person aggrieved by the award, whether his objection be to the measurement of the land, the amount of compensation, the person to whom it is payable or the apportionment of the compensation among the persons interested, may apply to the Collector for reference to the Court. The "Court," by which is meant the principal Civil Court of Original Jurisdiction or a judicial Officer specially empowered to perform the functions of the Court, under the Act has to decide questions referred to the Court ; *Saibesh Chandra Sirkar* v. *Sir Bejoy Chand Mahtap*, 26 C.W.N. 506. The proceedings before the Collector are administrative and not judicial and his award, though conclusive against the Government, is subject to the land owners' *right* to have the matter referred to the Court. *Ezra* v. *Secretary of State*, 32 Cal. 605 : 9 C.W.N. 455 : 1 C.L.J. 227. Reference, therefore, means the submission by the Collector to the Court the objections of a person interested in the land when land is acquired, whether his objections be as to the measurement, the amount of compensation, the person to whom it is payable or to the apportionment of the compensation among the persons interested, for judicial determination thereof.

Conditions Precedent to a valid Reference—Section 18 provides that any person interested, who having not accepted the award, desires to have an adjudication of the claim by the Court, should, within the period of limitation prescribed in the proviso to that section, do certain things, *viz.*, FIRST:—He must make a written application to the Collector. SECOND:—That written application should require the Collector to refer the matter for the determination of the Court, whether the objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. THIRDLY:—Such application shall state the *grounds* on which objection to the award is taken.

These are the conditions prescribed by the Act for the right of the party to a reference by the Collector to come into existence. They are the conditions to which the power of the Collector to make the reference is subject. They are also the conditions which must be fulfilled before the Court can have jurisdiction to entertain the reference.

As was said by the Judicial Committee of the Privy Council in *Nusserwanjee Pestonjee* v. *Meer Mynooden Khan*, (6 M.I.A. 134 at p. 155) "wherever jurisdiction is given to a Court by an Act of Parliament or by a Regulation in India (which has the same effect as an Act of Parliament) and such jurisdiction is only given upon certain specified terms contained in the Regulation itself it is a universal principle that these terms must be complied with in order to create and raise the jurisdiction, for if they be not complied with, the jurisdiction does not arise". The same case is also authority for the proposition that "the compliance need only be substantial so as to be intelligible and clear."

Require:—The word "require" implies compulsion. It carries with it the idea that the written application should itself make it incumbent on the Collector to make a reference. It is clear from the Section that those formalities prescribed by Section 18 are matters of substance and their observance is a condition precedent to the Collector's power of reference.

So it was held in *In re Land Acquisition Act and in the matter of Government and Nanu Kothare* (36 Bom. 275) that an attorneys' letter to the following effect, viz. "We have the honour on behalf of our clients to state that they do not accept the said award..................................We will send you in due time a formal request to refer the matter for the determination of the High Court under Section 18 of the L. A. Act," is not application for reference. Where on a compulsory acquisition of property a person sends a letter to the L. A. Officer

stating that the compensation awarded to him is inadequate and that unless the property is released or proper compensation awarded, he would have the acquisition declared void in a Civil Court, that does not amount to an application for reference under Section 18 of the L. A. Act. *Sammuel Burje* v. *Improvement Trust, Lucknow*, 73 I.C. 127 : 90, O.A.L.R. 925.

In *Secretary of State* v. *Hakim*, 25 I.C. 448, the Collector made the award on 7. 6. 1912, and on the 11. 7. 1912, a somewhat vague petition on *unstamped* paper was presented to the Collector by all the claimants. The petition was returned on the ground that it was *unstamped* and did not specify the field areas to which it related. On the 23rd July 1912 one of the claimants presented a written objection to the award, but in it he merely asked the Collector to revise his award and grant him further compensation. The Collector rejected the application as time-barred. On the 14th August 1912, another claimant applied to the Collector practically for a review of his award. This application was also rejected as time-barred. The remaining claimants said to be minors, whose mother acting as guardian, made no application after the unstamped petition of the 11th July 1912, held, that the Civil Court had no jurisdiction to deal with the case of the claimants (1) because there was no application by any one of the claimants asking the Collector to take action under Section, 8 of the Act, (2) because the petitions made by the claimants were time-barred.

Grounds of Objection :—Though Section 18 (2) requires that the application for reference shall state the grounds on which the objection to the award is taken there is nothing in the L. A. Act which requires the claimant to state the grounds *in detail* upon which in applying for a reference under Section 18 of the L. A. Act, he claims a larger sum than that awarded by the Collector. *Mahananda Pal* v. *Secretary of State*, 24 C.W.N. 716. When an owner says: "I object to the award of the Collector and I wish a reference to be made to the Court" and then adds in connection with one item of the property that the compensation paid for the different classes of the land is very low and also adds in connection with another item of property that the compensation for the walls and other buildings is too low, he does give grounds for the reference, *Secretary of State* v. *Jiwan Baksh*, 36 I.C. 213 : 67 P.R. 1916 : 180 P.W.R. 1916. An application to a Collector which does not contain any requisition that the matter of the award should be referred for the determination of a Court, or the grounds on which objection to the award is taken but merely requests him that the matter relating to the compensation might be postponed till the final decision as to the propriety or legality of the acquisition has been settled by competent court, is not an application in compliance

with the requirements of section 18 of the L. A. Act and the reference made by the Collector on such an application does not, therefore, confer jurisdiction on the District Judge to entertain the reference. The Collector in making a reference under the L. A. Act is only an agent of the Government. He is not entitled to waive the requirements of the law on behalf of the Government. A High Court cannot in an appeal from the award of a District Judge on a reference under the L. A. Act allow an amendment of the application for reference made to the Collector. *Sukh Bir Singh* v. *Secretary of State*, 25 A.L.J. 35: 97 I.C. 566: (1926) A.I.R. (A) 766. Section 18 (2) of the L. A. Act 1894, requires that any person interested, who having not accepted the Collector's award, requires the collector to make a reference to the Court shall state the grounds on which objection to the award is taken. Such requirement is one of the conditions precedent to the obligation of the Collector to make the reference. But there is no express provision in the Act which expressly lays down that the claimant in question should be confined to those grounds by the Court in determining his objection. *In the Matter of Rustomji B. Jijibhoy*, 7 Bom. L. R. 981.

Reference under Sec. 18 and Reference under Sec. 30:—The only distinction between reference under Section 18 of the Land Acquisition Act and one made under Section 30 thereof, is, that the reference under the latter section is made solely on the question of title by the Acquisition Officer *of his own motion* while the reference under the former section is made *on the application of persons interested* in the compensation money and not by the acquiring officer on his own motion: *Hazura Singh* v. *Sunder Singh*, 97 P.R. 1919: 53 I.C. 589. Section 18 deals *inter alia* with objections as to the persons to whom compensation is payable. Section 30 deals with disputes as to the person to whom compensation is payable. *Gobinda Ranee* v. *Brindaranee*, 35 C. 1104.

Reference Pre-supposes Valid Award:—It should also be noted that every reference presupposes a valid and legal award by the Collector. It is well known that until an award is announced or communicated to the parties concerned it cannot be said to be legally made. In the absence of a valid award the Civil Court has no jurisdiction to take any proceedings on a reference made to it. *Macdonald* v. *The Secretary of State*, 19 P.L.R. 1909: 123 P.R. 1908: 4 I.C. 914. When land actually taken by the Government is different from that mentioned in the declaration issued under the Land Acquisition Act the proceedings of the Collector are void and there can be no valid reference to the Civil Court, *Gajendra Sahu* v. *Secretary of State*, 8 C.L.J. 39.

When no Reference Lies :—It has been held in *Imdad Ali Khan* v. *Collector of Farakhabad*, 7 A. 817, that the Collector has no power to make a reference to the District Judge under Section 15 of the Old Act X of 1870, in cases in which he claims the land in question on behalf of the Government or the Municipality and denies the title of other claimants and the District Judge has no jurisdiction to entertain and determine such reference. The reason for holding that in such cases no reference lies is "the special jurisdiction of the Judge for this purpose is intelligible enough. It was never intended to be extended to a case in which the Collector claims the land on behalf of the Government or the Municipality and denies the title of other claimants to the land. Such a position would be inconsistent with the applicability of the Act, for it denies the right of any person to compensation. It seems a contradiction in terms to speak of the Collector as seeking acquisition of land, when he asserts that the land is his own, and that no other person has any interest in it." *The Crown Brewery, Mussorie* v. *The Collector of Dehra Dun*, 19 All. 339. When the Government or a Municipality or other local authority for whose ultimate benefit the land is being acquired, claims to be the *full* owner, and no other person has any sort of right in the land there is nothing to be acquired. But when the claim of the Municipality or other local authority is to a restricted right, there is nothing in the Act to prevent the Government from acquiring the land and then dealing with it in any manner it chooses. There is nothing to limit the scope of the Act so as to exclude from its operation all cases in which a Municipality or other Local authority, for whose ultimate benefit, the Government may wish to take action, happens to have *some* interest in the land to be acquired. *Babujan* v. *The Secretary of State*, 4 C.L.J. 256. Where Government issues a notice under S. 9 of the L. A. Act in respect of land of which it claims to be the owner, whether or not it admits that some other person holds a subordinate interest in it, it is open to any person claiming an interest in the land to assert that interest and if he does so, the Collector is bound to enquire into the extent of the interest in proceedings under Section 11 of the Act. If however the Collector decides the question of title in dispute between a claimant and the Government against the former the question cannot form the subject of a reference to a District Judge under Section 18 of the Act. The claimant's remedy in such a case is by a separate suit. *Mohomad Wajeb* v. *Secretary of State*, 24 O.C. 197 : 8 O.L.J. 426 : 64 I.C. 93. In the recent case of *Mangaldas Girdhardas Parekh* v. *The Assistant Collector of Prantij Prant, Ahmedabad*, 43 B. 277, the facts were that the claimant owned a bunglow which stood within the limits of

Ahmedabad Cantonment. The Government having acquired the bunglow under the L. A. Act the claimant was awarded Rs. 4,500 compensation for the superstructure of the bunglow; and Rs. 18,634 were awarded to Government as compensation for the land on the footing that the land being within cantonment limits belonged to Government. The claimant appealed to the High Court, contending *first* that the superstructure was undervalued and *Secondly* that he was entitled to the full compensation for land also in as much as under the provisions of the L. A. Act the Court had no jurisdiction to try any question of title or apportionment between the claimant and the Government, *held*, that in a proceeding under the L. A. Act, it is competent to the Court to adjudicate on any question of title to the land acquired, or to apportion the amount of compensation for it, as between the claimant and Government. Under the L. A. Act what is acquired is the land which includes all that is stated in Cl. (a) Sec. 3 of the L. A. Act. But in the case of any land with superstructure thereon in which the Government have an admitted interest or wherein that interest is a matter of dispute between a claimant interested in the property and the Government, it is open to the Government to acquire that property under the Act. When it comes to a question of determining the market value of the property acquired and the sum payable as compensation for the property acquired to the person having a limited interest in the property, it is open to the Court to determine what sum is really payable to the limited owner. The question of title in such proceedings is really incidental to the question of the determination of the market value of the interest of the claimant in the land acquired. See also *Government of Bombay* v. *Esuffali Salebhoy,* 12 Bom. L.R. 34: 5 I.C. 621; *Deputy Collector, Calicut* v. *Aiyavu Pillai,* 9 M.L.T. 275: 9 I.C. 341; *Bejoy Kumar Addy* v. *Secretary of State,* 25 C.L.J. 476: 39 I.C. 889.

Reference Barred by Consent or Conduct:—According to the ordinary principles of agreement when an offer is made and accepted it becomes a contract and binding on the parties. In cases in which a claimant accepts the award, that is, the tender of the Collector, he cannot be permitted to object to the same and claim a reference thereof to the Civil Court. Similarly, a person who has taken payment *without protest* must be deemed to have waived his objections to the award, if any, and cannot claim a reference thereafter (*vide* Sec. 20 (b). In a proceeding under the L. A. Act a party who has raised no objection to the apportionment of the compensation made by the Collector must be taken to have accepted the award in that respect. *Abu Baker* v. *Peary Mohan Mukherjee,* 34 Cal. 451. A claimant, by not adducing any evidence before the Collector and by his mortgagee accepting the sum awarded to him did

not by implication accept the award. *Gangadas Mulji* v. *Haji Ali Mahomad Jabal Saji,* 18 Bom. L. R. 826: 36 I.C. 433.

Objections to award of the Collector :—In a proceeding under the L. A. Act, a party who has raised no objection to the apportionment of the compensation made by the Collector must be taken to have accepted the award in that respect. *Abu Baker* v. *Peary Mohun Mukherjee,* 34 Cal. 451. Where in a proceeding under the L. A. Act the tenants accepted the Collector's valuation, but the landlord objected to it and asked for a reference and the judge allowed an excess amount representing all the interests in the land, *held,* that the tenants were not entitled to any portion of the excess amount allowed by the Judge and the Collector has got to deposit his share in Court. *Secretary of State* v. *Manohar Mookerjee,* 23 C.W.N. 720. The ordinary rule in a proceeding under the L. A. Act is that a party who has made no objection to the apportionment of compensation made by the Collector must be taken to have accepted the award in that respect and such person, upon a reference made by some other party who considers himself aggrieved by the award of the Collector, is not entitled to have it varied for his own benefit. *Bejoy Chand Mahtap* v. *P. K. Mazumdar,* 13 C.L.J. 159 ; *Moharaja Shashi Kanto Acharjee* v. *Abdul Rehman Sirkar,* 38 C.L.J. 265 ; *L. A. Officer, Karachi* v. *Lakshmi Bai,* 11 I.C. 304 ; *Mahavali* v. *Diwan Mushtaksing,* 25 I.C. 803: 8 S.L.R. 18 ; *Anwar Ali* v. *Ram Sarup,* 180 P.L.R. 1914: 81 P.W.R. 1914: 24 I.C. 903.

Limitation for Reference :—The proviso of Section 18 (2) provides that every application for reference shall be made (a) if the person making it was present or represented before the Collector at the time when he made his award, within *six weeks* from the date of the Collector's award ; (b) in other cases, within *six weeks* of the receipt of the notice from the Collector under Section 12 (2) or within *six months* from the date of the Collector's award, whichever period shall first expire. *Administrator General, Bengal* v. *The L. A. Collector, 24 Parganas,* 12 C.W.N. 241.

The word "notice" in Cl. (b) of the proviso to Section 18 is not restricted to "immediate notice" prescribed in Section 12 (2). If the word "notice" in Cl. (b) of the proviso to Section 18 be restricted to "immediate notice," it must follow that the Collector has no power to give any but immediate notice and that a late notice is bad. And if a late notice is bad and inoperative, what is the result?—Does the award of the Collector become void and do all his proceedidngs become abortive, if no immediate notice is given by him as directed by sub-sec. (2) of Section 12? There is no express provision in the Act stating that such shall be the result of a late notice.

According to Cl. (b) of the proviso to S. 18 every application, requiring the Collector to refer the matter for the determination of the Court, shall be made, in cases where the party interested who has not accepted the award, was not present or was not represented before the Collector when the latter made his award "within *six weeks* of the receipt of the notice from the Collector" under S. 12 (2) or within *six months* from the date of the Collector's award *whichever period shall first expire.* The words "whichever period shall first expire" are important because they afford the real clue to the interpretation of the clause. The alternative period of "six months from the date of the Collector's award" can expire first i.e. before the other period of six weeks from the receipt of the Collector's notice only when that notice has been given four months after the date of the award. A notice given four months after that date can hardly be "immediate notice." Nevertheless the clause in question does clearly contemplate the giving of such late notice and provides for the computation of the time of six weeks from its receipt for the purpose of limitation which is obvious from the words "whichever period shall first expire." These words obviously point to a late as well as to an immediate notice.

So far as the period of limitation provided for in Cl. (b) of the proviso to S. 18 goes, it is made to run from the date of the receipt of the notice from the Collector, in which case it is six weeks or from the date of the Collector's award in which case it is six months whichever period shall first expire. That means that in any case the proceedings shall be final after six months from the date of the award. This evidently contemplates that a party interested should not sit quiet, waiting for the Collector's notice or plead want of it, but should in any case himself be vigilant. The longer period of six months is given him as an alternative, where the Collector has not himself been prompt. The lateness of the notice, cannot, therefore, affect the question of limitation.

From these considerations it follows, that the word "notice" as used in Cl. (b) of the proviso to Section 18 means notice, whether immediate or not. This construction brings all the material provisions into harmony with one another. The clause in question prescribes *one* of two periods of limitation for a party who has not accepted the Collector's award—either six weeks from the date of the receipt of the Collector's notice whether immediate or not, or six months from the date of the award, *whichever period shall first expire.* These last words show that the element of notice is an essential ingredient, so to say, of the two alternative periods and such notice may be immediate or not. *In the matter of Government and Nannu Kothare,* 30 Bom. 275 ; *Administrator General, Bengal* v. *The*

L. A. Collector, 24 Pargs. 12 C.W.N. 241.. A L. A. officer made his award on 3rd September, 1909. One of the persons interested objected the next day to a part of the compensation being awarded to another claimant. But on 4th March, 1910, the Collector directed the disputed sum to be paid to the latter. The objector on the 21st March, 1910 moved the Collector by an application to make a reference under Section 18 of the L. A. Act, *held* that the Collector's award was complete on 3rd September 1909, as soon as he apportioned the amount of compensation among the respective claimants and as the actual payment was not necessary to the completion of the Collector's award the application of the 21st March, 1910 was out of time and therefore barred by limitation under Section 18 (2) (b) of the L. A. Act, *Miran Baksh* v. *Feroze Din*, 14 I.C. 537 : 232 P.L.R. 1912 : 17 I.C. 395. An award written or signed by the Collector without being made in the presence of or communicated to the applicant is *qua* the applicant no award at all and the period of limitation for filing an objection to the award can only be computed from the date when the award is made within the applicant's knowledge. *Hari Das Pal* v. *Municipal Board, Lucknow*, 16 O.C. 375 : 22 I.C. 652. When before the date of the award the Collector having passed an order that the party should go to the Civil Court, the muktear of the party ceased to take any further part in the proceedings before the Collector, and a reference was made more than six weeks after but within six months of the award, held that the reference was within time under Section 18 (2) (b) of the L. A. Act. *Mohendra Chandra Dutt* v. *Abhoy Charan Sarma*, 40 I.C. 355.

Reference on Time-Barred Application :—The Collector whose position under the Land Acquisition Act, as held by the Privy Council in Ezra's Case, already referred to, is that of an agent to Government having made the reference on a time-barred application for reference, can it be said that he must be regarded as having waived his right or the right of his principal, the Government, to dispute that the reference was unauthorised and therefore illegal? The Collector's authority to make the reference as an agent of Government is restricted by the statutory conditions prescribed in Section 18. The claimant can not plead ignorance of these conditions and the restricted nature of the Collector's authority. He cannot bind Government by stepping outside the limits of the power given by Section 18. If he does step outside them, his action is illegal and no waiver on his part can ever atone for the failure which the law required him to fulfil before his right to require the Collector to make a reference could come into existence. *In the matter of the Government and Nannu Kothare*, 30 B. 275 ; *Collector of Akola* v. *Anand Rao*, 7 N.L.R. 88 : 11 I.C. 690. It is not open to a Collector to waive the objection of limitation and it is always

open to the Court to hold that an application to a Collector for reference could not form the basis of reference under Section 18 and 19 in as much as it was barred by time. *Mian Ghulam Muhyuddin* v. *Secretary of State,* 24 I.C. 379: 48 P.R. 1914: 208 P.L.R. 1914.

When Last Day for Reference is a Holiday:— It is a moot question whether a claimant is entitled to a deduction of time of the holidays from the "six weeks" period of limitation. There is a conflict of judicial opinion as to whether the provisions of the Limitation Act would apply to the special period of limitation prescribed in Section 18 of the Land Acquisition Act. The Land Acquisition Act is a special Act and it would appear from the decision of the Bombay High Court in *Guracharya* v. *The President of the Belgaum Town Municipality,* 8 B. 529, that the provisions of the Limitation Act apply to special Acts. The Madras and Calcutta High Courts have taken a different view: In *Veeramma* v. *Abbiah,* 18 M. 99 and in *Girija Nath Roy* v. *Patani Bibee,* 17 C. 263; *Nogendra Nath Mullick* v. *Mathura Mohan Porhi,* 18 C. 368, the Madras and the Calcutta High Courts have respectively held that the provisions of the Limitation Act do not apply to special Acts. *In the matter of the Government and Nanu Kothare,* 30 B. 275.

Is time taken for copy of the Award excluded from Computation:—The Land Acquisition Act mentions no such thing as a judgment of the Collector making an award under the Act. If the claimant objects to the award, he ought to know why he objects: The Collector's reasons are not necessary for his objection: Further, Section 12 of the Limitation Act, which alone can possibly apply, speaks, of a copy of the award not of the Collector's judgment. *In the Matter of the Government and Nanu Kothare,* 30 B. 275. Under Section 12 of the Limitation Act a person who makes an application under Section 18 of the Land Acquisition Act for a reference to be made to the Court is entitled to exclude from the period of limitation the time spent in obtaining a copy of the Collector's award, *H. N. Burjorjee* v. *Special Collector, Rangoon,* 96 I.C. 110.

Minority :—Under Section 18 of the L. A. Act no extension of time is allowable on the ground of minority. *Secretary of State* v. *Hakim,* 25 I.C. 448.

Payment does not Debar Reference :—We have seen in *Miran Buksh* v. *Feroze Din,* 232 P.L.R. 1912: 17 I.C. 395 that the actual payment of the compensation awarded is no part of the Collector's award and is not necessary to the completion of it; the award is complete as soon as the Collector apportions

the compensation among the parties concerned. The mere fact that compensation money awarded under the L. A. Act has been paid out to a party does not oust the jurisdiction of the Civil Court to entertain a reference duly made under the L. A. Act. *Jogesh Chandra Roy* v. *Yakub Ali*, 17 C.W.N. 1057. The fact that the compensation awarded under the L. A. Act is withdrawn by the party to whom it was awarded does not affect the right of the party who is entitled to receive it to have a reference made to the Court under Section 18 of the L. A. Act. *Rahit Sahu* v. *Mahadeo Choudhury*, 1920 Pat. 129: 1 P.L.T. 143: 2 U.P.L.R. (Pat.) 43: 56 I.C. 126.

Deposit of Money is not necessary for Reference :— The Deposit of the monies in Court is not a condition precedent to the making of the reference by the Collector and the Court has jurisdiction to entertain the reference without the deposit of the compensation money, *Gangadas Mulji* v. *Haji Ali Mahamad Jalal*, 42 B. 54: 18 Bom. L.R. 826: 36 I.C. 433. It is inconceivable that the legislature could have intended that deposit in Court should be a condition precedent under Section 18 of the L. A. Act.

Collector's statement to the Court.

19. *(1)* In making the reference, the Collector shall state for the information of the Court, in writing under his hand,—

(*a*) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(*b*) the names of the persons whom he has reason to think interested in such land;

(*c*) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11; and

(*d*) if the objection be to the amount of the compensation, the grounds on which

the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

NOTES.

Reference may be Claimed as of Right :—To claim reference is a right inherent in every person whose land is acquired. It has been seen in *Ezra* v. *Secretary of State*, 32 Cal. 605, (P.C.) that the award in which the enquiry results is merely a decision binding only on the Collector (as to what sum shall be tendered to the owner of the land) and is subject to the land owner's *right* to have the matter referred to the Court. Section 18 enables "any person interested, who has not accepted the award" to "require" a reference: and Section 3 (b) defines "persons interested" as including all persons *claiming* an interest in the compensation. As long as the application sets out a claim to an interest in the compensation it is no part of the Collector's duty to decide whether the claim is well-founded: and is not authorised to refuse to make the reference merely because he may think it is not. The question the Collector may have to decide under Section 18 is whether the application is in proper form and whether it is in time. It has been held in *Administrator General, Bengal* v. *The L. A. Collector*, 12 C.W.N. 241, that under Section 18, any person interested may require that the matters covered by the award be referred by the Collector for the determination of the Court provided that the application is made, if the person was present or represented before the Collector at the time when he made his award, within 6 weeks from the date of the Collector's award or in any other case within 6 weeks from the date of receipt of the notice under Sec. 12 (2) or within 6 months from the date of the Collector's award whichever period shall first expire, and if he is within time, and his applicaton is otherwise proper in form and has satisfied the requirements of Section 18, the Collector was bound as enjoined by the Section to initiate judicial proceedings contemplated by Part III of the Act.

Refusal to Refer :—In *Paramesswar Aiyar* v. *Land A. Collector, Palghat*, (42 Mad. 232) the order of the Collector on a petition of reference was "these persons do not appear to be the accredited representatives of the Devasthan. The petition

is, therefore, rejected." The High Court in revising that order held, "that the order is illegal hardly admits of doubt, Section 18 enables any person interested, who has not accepted the award to require a reference, and Section 3 (b) defines persons interested as including all persons *claiming* an interest in the compensation. As long as the application sets out a claim to an interest in compensation, it is no part of the Collector's duty to decide whether the claim is well-founded: and he is *not authorised* to refuse to make the reference merely because he may think it is not. In *Administrator General, Bengal* v. *The L. A. Collector, 24 Parganas,* 12 C.W.N. 241, the award was made on 26th Septembr, 1904. The Collector on the 11th October, 1904, allowed time up to 1st November, 1904 to file the statement of claim. The statement of claim was filed 1st November, 1904. The order passed on 1st December, 1904 was that "the Administrator-General was not entitled to any compensation, his rights having been acquired by the Government; his petition is rejected." The Administrator-General received notice of this order on 14th December, 1904. He filed a petition of reference on 23rd February, 1905; *held* that the Collector having allowed his award dated, 26th September, 1904 to be re-opened, and notice of his final order having been given on 14th December, 1904, which should be taken as a notice under Section 12, the Administrator General was entitled to six weeks' time from the latter date to file his application for reference. If it is assumed, however, that the Collector's proceedings after the filing of the award on 26th September, 1904 were not warranted by law, and that he was incompetent to re-open the original award, the A. G. could make the application for reference within six months of the date of the original award. In either view of the case the Collector was *bound* as enjoined by the section to initiate the judicial proceedings contemplated by Part III of the Act.

Remedy on Refusal of the Collector to Refer:—There is a great divergence of judicial opinion as to whether the High Court has jurisdiction to revise the order of the Collector when he refuses to refer. In deciding the question in *Administrator General Bengal* v. *The L. A. Collector,* 12 C.W.N. 241, the Calcutta High Court observed "the question which arises is whether the High Court has jurisdiction under Section 622 (now Sec. 115) or Sections 15 and 24 of 25 Vic. C. 104 to interfere. It is admitted that up to and including the time of making his award the Collector was, in no sense, a judicial Officer and that the proceedings before him were not judicial proceedings, *Ezra* v. *Secretary of State,* 32 C. 605: 9 C.W.N. 454 and however irregular his proceedings we cannot interfere with his award under Section 11 of the Act."

"But where an application is made to the Collector requiring him to refer the matter to the Civil Court, the Collector may have to determine, and determine *judicially* whether the person making the application was represented or not when the award was made or whether a notice has been served upon the applicant under Section 12 (2) and what period of limitation applies and whether the application is under the circumstances made within time. *The Collector's functions under Part III of the Act are clearly distinguishable from those of Part II of the Act. Part III of the Act relates to proceedings in Court. The Collector in rejecting the application was a Court and acting judicially and his order is subject to revision by this Court. To hold otherwise would be to give finality to an award under Section 11 even in cases in which the Collector acts irregularly and contrary to law and refuses on insufficient grounds to make a reference under Part III of the Act. The party aggrieved may be left without any remedy which is implied by a judicial trial before the Judge.*" *Krishna Das Roy* v. *The L. A. Collector Pabna,* 16 C.W.N. 327 : 16 C.L.J. 165.

The Madras View :—The Madras High Court at first in *Best and Co.* v. *Deputy Collector of Madras,* 20 M.L.J. 388 : 2 M.W.N. 348 : 4 L.W. 525 : 36 I.C. 621, following *Ezra* v. *Secretary of State,* 32 C. 605 (P.C.) took a contrary view, but in *Parameswar Aiyar* v. *Land Acquisition Collector, Palghat,* 42 M. 231 it was held that the decision in *Best & Co.* v. *Deputy Collector Madras,* 20 M.L.J. 388 was erroneous and following the decision in *The Administrator-General, Bengal* v. *The L. A. Collector,* 12 C.W.N. 241, held that the order of the Collector in refusing to make the reference *is a judicial order and the High Court in its revisional jurisdiction can set aside the order if it is found illegal.* The Court held that "We should follow the view in the *Administrator-General Bengal* v. *The L. A. Collector* in preference to that of *Best & Co.* v. *Deputy Collector of Madras* and that we have power to interfere in revision with the order of the subdivisional officer." In *Abdul Settar* v. *Special Deputy Collector, Vizagapatam,* 47 M. 357 : 46 M.L.J. 209 : (1924) M.W.N. 224 : 19 L.W. 445 : 84 I.C. 616 : (1924) A.I.R. (M) 442, the question "has the High Court power under Section 115 C. P. C. or under Section 107 of the Government of India Act to revise the order of the Collector acting under the provisions of the L. A. Act 1894 refusing to refer to the Court an application under Section 18 of the same Act by a person interested, requiring him to refer the matter for the determination of the Court," was referred to a Full Bench for answer. Schwabe C.J. in delivering the judgment of the Full Bench, observed, "There is a considerable conflict of authority on the point and the matter has accordingly been referred to a Full Bench....................It is pointed out and I think correctly

pointed out that when he (Collector) acts under Part III of which Sections 18 forms part, he is acting in a different capacity, because he was then to decide certain things; he has to send the case to the District Court, if certain provisions in that section have been complied with, one of which is the question of time, that is to say, he has to decide whether the application is barred or not and in doing so, in my judgment, he acts judicially. But the further question arises whether he acts as a Court. I think it is quite possible for persons to be given judicial function or functions which they have to exercise judicially without their being made courts properly so called, and I think a very clear instance is the case of registration authorities who have to decide whether or not they will accept the registration of certain documents, and it has been held by Full Bench of this Court in *Krishnamal* v. *Krishna Iyangar,* 22 M.L.J. 50, that in respect of a refusal of registration by a registration officer no revision petition lies to this Court because he is not a Court at all. I doubt if the Collector sits as a Court. Further the question arises, assuming that the Collector is a Court, is he a Court sub-ordinate to the High Court within the meaning of Section 115 of the C. P. C.? In my judgment he is not. There is no power of appeal from his decision to any one, either to the District Court or to this Court. There is nothing in the Act to show that he is in the true sense of the word in any way subordinate to the High Court. As far as Madras is concerned the Courts recognised are those Courts which are referred to in various statutes, such as Madras Civil Court's Act. His Court, if a court at all must he a Civil Court. The Civil Courts are enumerated in the Civil Courts Act and the Court of the Collector sitting under the L. A. Act finds no place in that enumeration. On the whole, I think, I must come to the conclusion that even if the Collector exercising his function under Section 19 although those functions are, as I have pointed out, judicial functions, is a Court, he is not a Court subordinate to the High Court. Therefore, no revision lies to this Court."

The Patna High Court :—The Patna High Court fully endorsed the view of the Calcutta High Court as held in the *Administrator-General, Bengal* v. *The L. A. Collector,* 12 C.W.N. 241 in *Sawaraswati Pattack* v. *The Land Acquisition Deputy Collector of Champaran,* 2 Pat. L.J. 204 and held that the High Court has jurisdiction to set aside an order of the Collector refusing to make the reference.

Oudh :—It was held in *Hari Das Pal* v. *Municipal Board, Lucknow,* 16 O.C. 375 : 22 I.C. 652, that a Collector in rejecting an application made under Section 18 (1) of the L. A. Act, acts judicially and his order is open to revision by the High Court.

The Punjab :—In the Punjab, it was at first held in *Rafe-ud-Din* v. *Secretary of State*, 65 P.R. 1915 : 144 P.W.R. 1915 : 31 I.C. 76, that a Collector who takes action under Section 18 of the L. A. Act is not in any sense a Civil Court, and the Chief Court has no jurisdiction to interfere with the order rejecting an application praying that the matter of the award be referred for the determination of the Court, but it has subsequently been held in *Secretary of State* v. *Jiwan Baksh*, 67 P.R. 1916 : 180 P.W.R. 1916 : 36 I.C. 213, that a Collector in making a reference, or refusing to make a reference acts judicially and therefore his proceedings are subject to revision by the High Court.

The Bombay View :—In *Balkrishna Daji Gupte* v. *The Collector, Bombay Suburbun*, 47 B. 699 : 25 Bom. L.R. 398 : 73 I.C. 354 : (1924) A.I.R. (B) 290 Macleod C. J. in delivering the judgment of the Court held that "I can quite understand that if the Collector refuses to do an act which is incumbent upon him under the provisions of the L. A. Act, Part III, there should be some remedy available to the party aggrieved. But it does not follow that the refusal of the Collector to do his duty is a judicial act or even if it is a judicial act it is a judicial act of a Court subordinate to the High Court. . . . . As far as I can see the High Court has not been given the power to interfere with the proceedings of the Collector, so that, if he refuses to do, what seems incumbent upon him under the provisions of Section 18 of the L. A. Act, we cannot direct him to make a reference and the proper remedy is either for the legislature to give us power of superintendance over the Collector's proceedings under the L. A. Act, or for Government to draw the attention of their officers to the provisions of the Act and lay down rules for their guidance, if they have not already done so."

The Burma View :—The Chief Court of Burma in *Robert Leslie* v. *Collector of Mergui*, (1901) L.B.R. 132, held that the proceedings under Part III of the L. A. Act are judicial in character. The Collector may be considered acting as "Court." An order passed by a Collector dismissing an application under Section 18 for a reference to the Court regarding his award of compensation for certain lands is a judicial order and is subject to revision by the High Court

What should the Reference Contain :—In making the reference the Collector shall state for the information of the Court in writing (a) the situation and extent of the land with particulars of trees, buildings, standing crops etc. thereon (b) the name of the persons whom he has reason to think interested in such land (c) the amount awarded for damages under Sections 5 and 17 or either of them and the amount of compensation awarded under Section 11, (d) if the objections be

to the amount of compensation, the grounds on which the amount of compensation was determined. To the said statements shall be attached a Schedule giving the particulars of the notices served upon and of the statements in writing made or delivered by the parties interested. These statements are necessary for the proper determination by the Court of the market-value of the land as defined in Section 3 (a) of the Act and also for the apportionment of the compensation money amongst the persons interested.

Result of Collector's Failure to send statements:—The clause (d) is a "most salutory provision of the law of L. A., because, by requiring the Collector to state in the reference to the Court the grounds on which the amount of compensation was determined it operates as a safeguard against any arbitrary award being made. *Madhusudan Das* v. *The Collector of Cuttack*, 6 C.W.N. 406.' The burden of proof is ordinarily on the claimant in the court of the Special Judge to prove that the valuation made by the Collector is insufficient. But the burden must vary according to the nature of the enquiry made by the Collector. If no evidence has been taken by the Collector and if no reasons have been given in his decision to support his conclusion the claimant has a very light burden to discharge. The *ipse dixit* of a Collector has very little weight and is not *prima facie* evidence of the correctness of his award. *Harish Chunder Neogi* v. *Secretary of State*, 11 C.W.N. 875 ; *Fink* v. *Secretary of State*, 34 C. 599 ; *Marwari Padamji* v. *Deputy Collector, Adoni*, 27 M.L.J. 106 : 24 I.C. 141.

Sub-Section (2):—The sub-section has been added to Section 19, with a view to insure the submission by the Collector of an accurate and complete descriptive list of all relevant papers which may be required by the Court.

Where a L. A. Collector merely forwards to the judge a statement of a claim preferred under Section 18 of Act I of 1894 with an expression of opinion that the claimant is not interested in enquiry, he cannot be said to refer the case within the meaning of Section 19 of the Act. *Best and Company* v. *Deputy Collector, Madras*, 20 M.L.T. 388: 2 M.W.N. 348: 4 L.W. 535: 36 I.C. 621. The failure of the Collector in making a reference under Section 18 of the L. A. Act to state the grounds on which the amount of compensation was determined as required by Section 19 (d) makes it incumbent upon the Collector to justify the award before the Special Judge. *Harish Chandra Neogy* v. *Secretary of State*, 11 C.W.N. 875. Ordinarily where a claimant contests before a Civil Court the amount of compensation awarded by a Collector, the burden is upon him to show that the amount so awarded is calculated on a

wrong basis; but where such award was made without taking any evidence that burden becomes very light; the mere *ipse dixit* of the Collector has very little weight and is not *prima facie* evidence of the correctness of his award, and the Collector has to justify his award under Section 19 (1) (d) of the Act. *Marwari Padamji* v. *Deputy Collector, Adoni,* 27 M.L.J. 106: 24 I.C. 141.

Service of notice.

20. The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:—

(*a*) the applicant;

(*b*) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and,

(*c*) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

NOTES.

Procedure in Court:—The reference to Court of the objections to the Collector's award is not a suit; *Mahadevi* v. *Neelamani,* 20 M. 269; nor by way of appeal against the Collector's award. It is for a judicial investigation and trial by a Court of competent jurisdiction as to measurement, area, market-value of the land acquired and also who are the persons interested in the apportionment of the compensation money. *Sri Raja Bommadevara Venkata Nara Naidu* v. *Atmuni Subrayadu,* 10 M.L.J. 349: 2 M.W.N. 4: 12 I.C. 436. As has been observed in *E. Taylor* v. *Collector of Purnea,* 14 C. 423, the L. A. Act provides for two classes of reference to the judge, *one to assess compensation* and the *other to apportion the compensation.* From the earliest time downwards it has been the invariable practice to treat *apportionment of the compensation*

as distinct from that of *settling the amount of compensation* under the provisions of the Act, and any dispute as to the apportionment is only decided as between those persons who are actually before the Court. *Hermutjan Bibi* v. *Padma Lochen Dass,* 12 C. 33. The value of land acquired under the L. A. Act should ordinarily be determined as a whole and the question of apportionment of compensation awarded amongst claimants of different degrees should thereafter be taken into consideration. *Sadhu Charan Roy Choudhury* v. *Secretary of State,* 31 C.L.J. 63. The L. A. Act contemplates two perfectly separate and distinct forms of procedure, observed their Lordships of the Judicial Committee in *T. B. Ram Chandra Rao* v. *A. N. S. Ram Chandra Rao,* 35 C.L.J. 545: 26 C.W.N. 713, one for fixing the amount of compensation described as being an award (an appeal from that award or of any part of that award is given to the High Court under Section 54 of the Act) ; and the other for determining, in case of dispute, the relative rights of persons entitled to the compensation money. When once the award as to the amount has become final all questions as to fixing of compensation are then at an end ; the duty of the Collector in case of dispute as to the relative rights of the persons together entitled to the money is to place the money under the control of the Court, and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be.

Parties in a Reference :—The party at whose instance the reference was obtained occupies the position of the plaintiff and his opponents that of the defendants. *Behary Lal Sur* v. *Nando Lal Gossain,* 11 C.W.N. 430. A company or corporation for whose benefit land may be acquired is not a necessary party in a land acquisition proceeding. Section 50 of the L. A. Act allows such company or corporation to appear simply for the purpose of watching the proceedings or assisting the Secretary of State. Such a Company or Corporation has no power to ask for a reference under Section 18 of the Act, nor has it the right to appeal against the decree made upon a reference, *In the matter of the application of the Chairman, Howrah Municipality,* 9 C.W.N. lxvi ; *The Municipal Corporation of Pabna* v. *Jogendra Narain Rakshit,* 13 C.W.N. 116: 4 I.C. 332. The real party to a proceeding in a Land Acquisition case is not the Collector but the Government, *Collector of Akola* v. *Anand Rao,* 7 N.L.R. 88: 11 I.C. 690. In a litigation to which the Crown is a proper party, it is the Secretary of State for India who alone can represent it ; *Government of Bombay* v. *Esuf-Ali-Salebhoy,* 12 Bom. L.R. 34: 5 I.C. 621.

Section 20 (c) :—Under Section 20 (c) of the L. A. Act the Secretary of State is only interested in the amount of com-

pensation which the Collector, or the Court in reference by the Collector, awards. He is not interested as a party in the distribution or apportionment of the compensation. His interest ceases when he has placed at the disposal of the Court the amount of compensation. Any dispute as to the distribution or apportionment of the amount must be fought out between the parties who claim a share in the compensation. *Sanwal Das* v. *Secretary of State*, 20 A.L.J. 604: 77 I.C. 112: (1922) A.I.R. (A) 438.

Notices :—The apportionment of the compensation is quite distinct from that of settling the compensation under the provision of the Act and any dispute as to the apportionment is only decided as between the persons who are actually before the Court. A separate notice, therefore, of the apportionment proceedings is required to bind any person by these proceedings and where such a notice has not been served, any party interested, although served with notice of the proceedings for settling the amount of compensation, cannot be considered a party to the proceedings for apportioning it, and is not barred by the decision in the latter proceedings from bringing a suit under the proviso to section 40 of Act X of 1870 (now Section 31) to recover a share of the money so apportioned. *Hermutjan Bibi* v. *Padmalachan*, 12 C. 33.

Restriction on scope of proceedings.

21. The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

NOTES.

This section relates to the scope of enquiry by Court i.e., either the principal Civil Court of original jurisdiction or the Court specially empowered by the Local Government in that behalf [Section 3 (d)] to which the reference lies under Section 18 of the Land Acquisition Act.

Courts under Act X of 1870 and Act I of 1894 :—The change that has been made in the constitution of the "court" by the present Act is very well explained by the Select Committee. "By Sections 10 and 11 of the Bill (passed into Act I of 1894) parts III and IV of the present Act (X of 1870) are repealed and a new procedure substituted for that which now obtained in the decision of objection to the Collector's award. Under the Act (X of 1870) if any one of the persons interested does not attend in the proceedings before the Collector, or if

the Collector is unable to agree with the persons interested as to the amount of compensation or if upon his enquiry questions arise respecting title to the land or interest therein, the Collector is *bound* to refer the matter to Court, which then proceeds to determine it with the help of assessors appointed by the Collector and the persons interested respectively. It was pointed out in the Statement of Objects and Reasons that these provisions entailed in a great number of cases unnecessary trouble, delay and expense to the owners of land acquired under the Act ; for experience has shown that failure in attendance before the Collector is more frequently due to mere indifference than to any actual dissatisfaction with the award. In the acquisition of land for a railway, for example, it constantly happens that the interest of an individual owner is so insignificant that he finds it not worth his while to attend before the Collector. His absence, however, under the rigorous conditions of the Act, necessitates a reference of the case by the Collector with all the attendant trouble and expense, not merely to the proprietor who was absent but to many others who may be associated with him in the matter and who may be themselves perfectly satisfied with the award."

"The Bill accordingly proposed to make the Collector's award final, with the proviso that any person dissatisfied could sue the Collector in Civil Court. The Committee are advised that in order to attain the end in view so radical a change in the procedure for the adjustment of the compensation is unnecessary. They think with more than one of the Governments consulted that it will be sufficient to provide that the Collector's reference to the Civil Court shall only be made when a person, dissatisfied with the award, asks that it be referred, the award being otherwise final. This change in the present law is reasonable and the Committee are of opinion that it sufficiently corrects the main practical defect in the Act. They cannot leave out of sight, that the valuation upon which a Collector proceeds are ordinarily made by native subordinates whose official interests lead them to make the valuation on the lowest possible scale, and that in many cases the owners of land acquired under the Act are poor peasants who have neither the means nor the courage to undertake a formal suit against the Collector of their district, and who would accept very inadequate compensation rather than do so."

"As to the discontinuance of the system of Assessors all authorities are agreed. It is the universal remark that competent Assessors are not easily procurable, and that there is an irresistible tendency for the Assessor to become not an adviser but a partisan, adding very largely to the cost of the trial without assisting the Judge. In the words of Mr. Justice Parker,

"the nominees are faithful to their trust and deliver their opinion with minds altogether unaffected by the evidence."

"The committee have accordingly substituted for sections 10 and 11 of the Bill a revision of Parts III & IV of the Act effected in accordance with the views which have thus been expressed. *The Collector's award will be referred to the Court whenever any person interested asks that it be referred, but only then. The Judge will give his decision on it, and in all cases there will be a right of appeal from the Judge's award to the High Court.*" Preliminary Report of the Select Committee dated 2nd February 1893.

Source and Origin of Civil Court's Jurisdiction :—It is, therefore, clear that it is the reference under Section 18 that gives the Court jurisdiction over the matters referred. The L. A. Court has jurisdiction only over those matters which have been referred by the Collector under Section 18 and on no other matter. The Court is powerless, if there is no reference by the Collector or if the Collector refuses to refer or the reference is bad in law. The conditions laid down in Section 18 must be strictly fulfilled for a valid reference to Court before the Court can have jurisdiction to entertain the reference. As has been pointed out by the Judicial Committee of the Privy Council in *Nesserwanjee Pestonjee* v. *Meer Mynoodeen Khan*, 6 M.I.A. 634, "whenever jurisdiction is given to a Court by an Act of Parliament, or by a Regulation in India (which has the same effect as an Act of Parliament) and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with in order to create and raise the jurisdiction, for if they be not complied with, jurisdiction does not arise." *In the Matter of Nanu Kothare*, 30 Bom. 375.

Jurisdiction, Exclusive :—When statutory rights and liabilities have been created and jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy such jurisdiction is *exclusive* and cannot concurrently be exercised by the ordinary Court, *Maharaja Sir Rameswar Singh* v. *The Secretary of State*, 11 C.W.N. 356: 34 Cal. 470: 5 C.L.J. 669. Some lands were acquired for a Railway and the Collector after serving notice under the L. A. Act upon the Zemindar and the Putnidar apportioned the compensation money half and half between them. Neither party applied for a reference under the L. A. Act and the Putnidar withdrew the amount awarded to him. The Zemindar thereupon brought a suit for recovery of the amount withdrawn by the Putnidar on the ground that under the Putni Kabuliat the Putnidar was not entitled to any com-

pensation money; *held* that the Zemindar having been served with notice under Section 9 of the Act was bound to apply for a reference under Section 18 when he was dissatisfied with the award, and he cannot maintain a suit in the ordinary Court to re-open the question. The Act creates a special jurisdiction and provides a special remedy. And ordinarily when jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy, such jurisdiction of the Civil Court is ousted, *Bhandi Sing* v. *Rama Dhin Roy*, 10 C.W.N. 991 : 2 C.L.J. 20n ; *Stevens* v. *Jeacocks*, (1848) 11 Q.B. 731 ; *West* v. *Downman*, (1880), 14 Ch. D. 111 ; *Ram Chundra* v. *Secretary of State*, (12 Mad. 105) ; *Saibesh Chandra Sarkar* v. *Sir Bejoy Chand Mahtab*, 26 C.W.N. 506 : 65 I.C. 711. Whenever a question of title arises between rival claimants, it must under the terms of the L. A. Act be decided in the case and cannot be made the subject of a separate suit. *Babujan* v. *Secretary of State*, 4 C.L.J. 256. The remedy of a person dissatisfied with an order made by the L. A. Collector under Section 11 of the L. A. Act is by a reference under section 18 of the said Act and not by a suit in the ordinary Civil Court for damages against the Secretary of State, *Jogesh Chandra Roy* v. *Secretary of State*, 29 C.L.J. 53. No Civil Court has any jurisdiction to go into any question decided by the L. A. Court. In a claim disposed of by the Collector in the course of L. A. proceedings under the special procedure prescribed by Act I of 1894 the Collector's order of adjudication of the rights of the owners or claimants to the property for which compensation has been assessed, cannot be questioned otherwise than by reference to Court under the provisions of the Act, and the Civil Courts are not competent to re-open and determine matters disposed of in accordance with the Act in a separate suit. *Amolok Shah* v. *Charan Das*, 16 P.W.R. 1913 : 17 I.C. 684. A person who, having been made a party to a reference under the L. A. Act had the opportunity and duty of litigating his claim before the Special L. A. Judge, but did not there press his claim to any part of the compensation, is not entitled to come again to the Civil Court and re-open the question. *Ranjit Sinha* v. *Sajjad Ahmad Choudhury*, 32 I.C. 922 ; *Secretary of State* v. *Quamar Ali*, 16 A.L.J. 699 : 51 I.C. 501 ; *Kasturi Pillai* v. *Municipal Council, Erode*, 37 M.L.J. 618 : 26 M.L.T. 268 : 10 L.W. 336 : 53 I.C. 646. All questions of title arising between the rival claimants in a L. A. proceeding should be decided by the L. A. Judge, in the L. A. case and should not be left to be decided by a separate suit. The Court was bound to decide all points, the decision of which was necessary to pass order as to the disposal of the money including questions arising as to who was the proper heir of the claimant. *Nihal Kuar* v. *Secretary of State*, 13 I.C. 550. In

Ramchandra Rao v. *Ramchandra Rao,* 26 C.W.N. 713: 35 C.L.J. 545 (P.C.): 24 Bom. L.R. 936 their Lordships of the Judicial Committee observe that "there has in the present case been a clear decision upon the very point now in dispute, which cannot be re-opened. The High Court appears to have regarded the matter as concluded to the extent of the compensation money, but that is not the true view of what occurred, for as pointed out in *Bardar Bee* v. *Hebib Merican Noordin,* L.R. 1909 App. Cas 615 it is not competent for the court in the case of the same question arising between the parties to review a previous decision, no longer open to appeal, given by another court, having jurisdiction to try the second case."

Scope of Reference :—The scope of reference made at the instance of a claimant under Section 18 of the L. A. Act is of a limited character. The question of the legality of the acquisition does not form the subject of enquiry by the L. A. Judge. *Raghunath Dass* v. *Collector of Dacca,* 11 C.L.J. 42. The questions which may be determined by the Court upon a reference relate to valuation and to other matters of a like nature. *Tulshi Makhania* v. *Secretary of State,* 11 C.L.J. 408. The Court of the L. A. Judge is a Court of special jurisdiction the powers and duties of which are defined by statute and it cannot be legitimately invited to exercise inherent powers and assume jurisdiction over matters not intended by the Legislature to be comprehended within the scope of the enquiry before it. It was never contemplated by the statute to authorize the L. A. Judge to review the award of the Collector or to cancel it or to remit it to him to be recast, modified or reduced. *The Court of the L. A. Judge is restricted to an examination of the question which has been referred by the Collector for a decision under Section 18,* and the scope of the enquiry cannot be enlarged at the instance of parties who have not obtained and cannot obtain any order of reference. *B. I. S. N. Coy.* v. *Secretary of State.* See also *Secretary of State for India* v. *B. I. S. N. Co.,* 15 C.W.N. 848: 13 C.L.J. 90 (P.C.). A court has no jurisdiction to deal with objections except those which were made by persons who were parties to the proceedings before the Collector and which brought about the reference. *Taylor* v. *The Collector of Purnea,* 14 C. 423, *Mohamed Safi* v. *Haran Chandra,* 12 C.W.N. 985; *Probal Chandra Mukherjee* v. *Raja Peary Mohon,* 12 C.W.N. 987. In a reference under Section 18 of the L. Act it is not open to the special judge to go into questions raised by parties who did not object to the award and apply for a reference. *Gobinda Kumar Roy Choudhury* v. *Debendra Kumar Roy Choudhury,* 12 C.W.N. 98. The ordinary rule in a proceeding under the L. A. Act is that a party who had raised no objection to the apportionment of compen-

sation made by the Collector must be taken to have accepted the award in that respect as such person upon a reference made by some other party who considers himself aggrieved by the award of the Collector is not entitled to have it varied for his own benefit. In other words the Civil Court is restricted to an examination of the question which has been referred by the Collector for decision and the scope of the enquiry cannot be enlarged at the instance of parties who have not obtained any order of reference. But the rule is inapplicable to a case where the scope and object of reference obtained by the aggrieved party was not to settle the question of apportionment as between himself and the other party who had raised no objection, but merely to obtain a final benefit for both. *Bejoy Chand Mahtab* v. *P. K. Majumdar,* 13 C.L.J. 159.

When an objection has been taken under one of the headings, mentioned in Section 18 of the L. A. Act, and a reference made in consequence, it is not open to the claimant to attack the award upon objection falling under some other heading. The judge is to determine the matter of the award to the extent comprised within the objection and apart therefrom the award is final under Section 12 of the L. A. Act. New objections belonging to the same category may be gone into and even if fresh objections to the award be entertainable, a judge is justified in refusing to entertain it on the ground of delay. *Hooghly Mills* v. *Secretary of State,* 12 C.L.J. 489; *Promotha Nath Mullick* v. *Secretary of State,* 40 C.L.J. 105. When a case is referred under Section 18 of the L. A. Act the whole case is referred subject to the limitation contained in Section 26 of the Act and not merely any particular objection and the District Judge is empowered, indeed, bound, to consider the question of compensation awarded in its entirety, *Zia-ud-Din* v. *Secretary of State,* 54 I.C. 920. Section 21 of the Act authorises the judge to confine his enquiry into valuation of the interests of persons affected by the Collector's reference, but the section must mean the admitted interests. If there is any dispute as to the relative value of such interests the judge should determine the total amount payable for the land leaving the questions of apportionment to be decided in a separate proceeding. *Fink* v. *Secretary of State,* 34 C. 599. Upon a reference under Section 18 of the L. A. Act made at the instance of some claimants, another person who was one of the claimants before the Collector and the nature of whose claim was set out in the reference is a person who is entitled to be present at the hearing of the reference. Mention of his claim in the Collector's reference under Section 18, amounted to a reference under Section 30. *Surendra Nath Tagore* v. *K. S. Bonerjee,* 29 C.W.N. 340: (1925) A.I.R. (C) 630.

Procedure in Reference :—Section 53 of the L. A. Act provides that "save in so far as they may be inconsistent with any thing contained in the Act the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under the Act." Hence land acquisition proceedings before the Court take as nearly as possible the forms of a Civil Suit and the provisions of the Code of Civil Procedure apply to the proceedings. In a procceding for the ascertainment of compensation on a reference under Section 18, the claimant is to be regarded as plaintiff and the Government as defendant. *Municipal Corporation, Pabna* v. *Jotindra Narain,* 13 C.W.N. 116. The L. A. Act contemplates *two* perfectly separate and distinct forms of procedure, one for fixing the amount of compensation described as being an award (an appeal from that Award or of any part of that award is given to the High Court under Section 54 of the Act) and the other for determining in case of dispute the relative rights of the persons entitled to the compensation money. When once the award as to the amount has become final, all questions as to fixing of compensation are then at an end. The duty of the Collector in case of dispute as to the relative rights of persons together entitled to the money is to place the money under the control of the Court and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be. *T. B. Ramchandra Rao* v. *A. N. S. Ramchandra Rao,* 35 C.L.J. 545 : 26 C.W.N. 713 (P.C.). The Collector has under Section 11 to enquire into the value of the land and into the respective interests of the persons claiming the compensation and after awarding a sum for compensation he has to apportion the said compensation among all the persons known or believed to be interested in the land of whom, or of whose claim he has information. Under Section 3 (b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act. It is quite possible that a person may be interested in the compensation money without having an interest in the land in the legal sense of the term. The Act does not indicate how the Collector is to effect the apportionment and Sections 20 and 21 which deal with the proceedings of the Court when a reference has been made under Section 18 are also silent on the question. It is not correct that in apportionment the market value of each interest is to be ascertained. The various rights of female members of a Hindu undivided family in the joint family property have no market-value though such members would be interested in the compensation money. What the collector and the Court have to do is to apportion the sum awarded amongst the persons interested as far as possible in proportion to the value of their interests and it is impossible to lay down any

general rule which can be followed. *In Re the L. A. Act in the matter of Pestonji Jahangir,* 37 B. 76.

Jurisdiction to Decide Questions of Title :—In *E. Taylor* v. *The Collector of Purnea,* 14 C. 425, the High Court observed that "It must be borne in mind that this Act (X of 1870) confers a special and limited jurisdiction upon various classes of people to decide certain questions with which the Act enables them to deal. We must not trouble ourselves with those sections dealing with the powers of the Collector. We have to do with that section which affects the powers of the Judge. The Act provides for two classes of references to the Judge and the Judge can decide only those things which arise out of those references. The *first* class of reference is to award compensation under Section 15 and the *Second* class of reference is for the apportionment of compensation under Section 38 and an appeal to this Court from these decisions is given in certain limited cases. The result is that the Court has power under proper references to decide what compensation shall be awarded and to whom it shall be paid. And it must be taken now on the decisions that for those purposes *the Judge has power to decide questions of title ;* that can no longer be disputed since the decision of the Privy Council in *Raja Nilmoni Sing Deo Bahadur* v. *Rambandhu Roy,* (7 C. 388). In *Imdad Ali Khan* v. *The Collector of Furakhabad,* 7 A. 817 it has been laid down that Section 51 of the L. A. Act (X of 1870) contemplates a reference when the question of the title to the land arises between the claimants who appear in response to the notice issued under Section 9 and who set up conflicting claims one against another as to the land acquired *which, the District Judge as between such persons can determine.* In the Full Bench case of *Hussaini Begum* v. *Husaini Begum,* 17 A. 373, it has been held that there is nothing in the section to suggest that the Judge should not decide, as between rival claimants, claims to compensation, whether the claimants respectively claim the whole amount or proportionate part only, all *questions of title* upon which the right to share in the amount and the proportion to be awarded to them respectively would depend." *Crown Brewery, Mussorie* v. *The Collector of Dehra Dun,* 19 All. 339. Hence it follows that whenever *a question of title* arises between rival claimants, it must, under the terms of the L. A. Act be decided in the cause, and cannot be made the subject of a separate suit. *Babujan* v. *Secretary of State,* 4 C.L.J. 256 ; *Nihal Kuar* v. *The Secretary of State,* 13 I.C. 550. In this connection it is important to note the distinction between a reference made under Section 18 of the L. A. Act and one made under section 30 thereof. The distinction is that the reference under Section 30 is *made solely on the question of title by the*

Acquisition Officer of his own motion, while the reference under Section 18 is made on the application of persons interested in the compensation money and not by the acquiring officer of his own motion, *Hazura Sing* v. *Sunder Singh*, 97 P.R. 1919: 53 I.C. 589. Hence it is quite clear that the court in a L. A. case can go into the questions of title for the purpose of determining which of the contending parties is entitled to the compensation: it is not bound to award compensation to the ostensible owner in possession at the time of the acquisition. *Krishna Kalyani Dassi* v. *R. Braunfeld*, 20 C.W.N. 1028: 36 I.C. 184.

Where Court should Add Parties :—When under Section 30 of the L. A. Act, I of 1894, the Collector has referred to the District Judge a dispute as to the apportionment of compensation settled under Section 11 of the Act, it is not *ultra vires* of the District Judge to add a party to the proceedings before him having regard to Section 53 of the Act and Section 32 of the Code of Civil Procedure (1882). In *Promotha Nath Mitra* v. *Rakhal Das Addy*, 11 C.L.J. 420, during the pendency of the proceedings before the L. A. Collector the property acquired was sold for arrears of revenue. The sale was confirmed after the collector had made his award. At the instance of the defaulting proprietor the Collector made a reference to the Civil Court upon a question of the apportionment of the compensation. The purchaser applied to the Civil Court to be made a party to the proceedings, but his application was refused; *held*, that the purchaser at the revenue sale was entitled to be made a party to the proceedings but he could urge only such objections as might have been urged by the defaulting proprietor. When a person obtained an attachment of the compensation money, in so far as it represented the interest of his judgment-debtor, before a reference was made and after the reference and during the pendency of the proceedings in the Civil Court, the judgment-debtor put in a petition of compromise, held, that the effect of the compromise was to transfer the interest which the judgment-debtor possessed to other claimants and such transfer was contrary to the provisions of Sections 64 of the Code of Civil Procedure, 1908, and such compromise could not be given effect to as it was unlawful within the meaning of Or. 23 R. 3. C. P. C., that the attaching creditor should have been made a party in the proceedings in the Civil Court. Mookerjee J., in delivering the judgment, held, that "the position is obvious, that the claim of the petitioner ought not to have been ignored, he should have been made a party and his claim properly investigated. We may add and it has not been disputed, and in view of the decisions in *Promotha Nath* v. *Rakhal Das*, 11 C.L.J. 420, and *Dwarka*

Nath v. *Kishori Lal,* 11 C.L.J. 426 and *Baoli* v. *Hamijuddi Mondal,* 12 C.L.J. 267, it cannot be successfully disputed, that if it is held that the apportionment question should not have been disposed of without opportunity afforded to the petitioner to establish his allegations this Court has ample powers to set matters right." *Golap Khan* v. *Bholanath Marik,* 12 C.L.J. 545 : 7 I.C. 481. Upon a reference under Section 18 of the L. A. Act made at the instance of some claimants, another person who was one of the claimants before the Collector and the nature of whose claim was set out in the reference is a person who is entitled to be present at the hearing of the reference because mention of his claim in the Collector's reference under Section 18 amounted to a reference under Section 30. *Surendra Nath Tagore* v. *K. S. Bonerjee,* 29 C.W.N. 340.

Where Court should not Add Parties :—In a reference under Section 18 of the L. A. Act, it is not open to the special judge to go into questions raised by parties who did not object to the award and apply for a reference. Where the reference under Section 18 related to a dispute regarding apportionment between parties A and B, *held* that the special Judge was wrong in allowing parties C & D to be added on their own application and contest the award on a ground not raised in the reference. *Gobinda Kumar Roy Chowdhury* v. *Debendra Kumar Roy Choudhury,* 12 C.W.N. 98. Under Part III of the L. A. Act the special L. A. Court has no jurisdiction to deal with objections except those which are made by persons who are parties to proceedings before the Collector or who have since within 6 months applied to the Collector to make a supplementary reference in their case. The L. A. Act does not contemplate any decision by the special Court unless reference is made by the Collector. *Probal Chandra* v. *Raja Peary Mohon,* 12 C.W.N. 987. The addition of parties by the Civil Court, who have not been made parties to the reference by the Collector is wholly inconsistent with the L. A. Act, and therefore the Civil Court cannot add such parties to a land acquisition proceeding before it, nor can it award any compensation to one who joined in the proceeding for the first time in the Court of the special Judge, without applying to the Collector for any order of reference. *Mohanand Roy* v. *Srish Chandra Tewary,* 7 I.C. 10.

Court's Inherent Power to Order Refund :—Mookerjee J. in discussing, whether, when money has been withdrawn in violation of Section 32 of the L. A. Act, the L. A. Court can compel refund of the money improperly withdrawn, and can take adequate steps to enforce his orders made on that behalf, held, that "the case of *Nobinkali* v. *Bonolata,* 32 Cal. 921 indicates that the L. A. Court had such authority while in the case of *Gobinda Ramee* v. *Brindarani,* 35 Cal. 1104 : 12

C.W.N. 1039, followed in *Gangadas Mulji* v. *Haji Ali Mohammad Jalal,* 42 B. 54, it was held that the L. A. Court is helpless in the matter ; but this latter view was adopted on the assumption that a Civil Court in a suit properly framed for the purpose, may afford adequate relief. The learned judges observed that "although a Court may have inherent power to order a refund of money which has been wrongfully obtained by any party by an abuse of its process, a District Judge is not entitled to order a refund of money paid by a Collector under the L. A. Act without any irregularity apparent at the time, and without any order from the Civil Court. It is needless for us to consider whether the view taken in *Nobinkali* v. *Bonolata* or that adopted in *Gobinda Ranee* v. *Brindarani* is well-founded on principle. One position appears to us to be beyond controversy, namely, that, when a Civil Court gives a declaration, as the Court below has done in the present case, that a defendant has qualified interest in the property but under a pretence of absolute ownership has taken possession of funds which he would not otherwise have been entitled to seize in view of the provisions of Section 32 of L. A. Act, the Court has ample power to give necessary directions to render effective the declaration which it has made. If any authority is needed for this proposition, reference may be made to the case of *London & North Western Railway* v. *Lancaster Corporation* (1851) 15 Beav. 22. In that case a Railway Company under pressure paid the purchase money for lands, acquired under the Land Clauses Act (1845) to the owners of the property instead of bringing it into Court under Section 69 of the Statute (8 & 9 Vict. C. 18) which corresponds with Section 32 of the L. A. Act. Sir John Romilly M. R. ruled that, upon a bill filed by the Company who had acquired the land, the owners would be compelled on motion to pay into Court the purchase-money in their hands for the purpose of *interim* protection. If we regard the matter as one of principle, it is obvious that the contrary view urged by the respondent is entirely unsustainable. As was pointed out by Sir George Jessel, M. R. in *Kelland* v. *Fulford* (1877) 6 Ch. D. 491, when land has been converted into money by reason of the proceedings of the Lands Clauses Act, the money remains impressed with the character of real estate. See also *Exparte Walker* (1853) 1 Drewry 503 ; *In Re Harrop's Estate,* (1857) 3 Drewry 726. In other words till the money passes into the hands of a person absolutely entitled thereto, it is well settled that Courts in this country, in the absence of Statutory provisions precisely applicable to a particular set of circumstances, are to act according to rules of equity, justice and good conscience. In our opinion the Court has ample power to compel the defendant to bring the money back into Court" *Mrinalini Dasi* v. *Abinas Dutt,* 11 C.L.J. 533 ; *Mokkand Lal Pal Chou-*

dhuggy v. *Mohommed Sami Meah,* 14 C. 484; *Govind Vaman* v. *Sakharam Ramchandra,* 3 B. 42.

The substantial question in controversy in *Jogesh Chandra Roy* v. *Yakub Ali,* 17 C.W.N. 1057 was whether the money having been paid out by the Collector "the reference for apportionment was permissible under Section 18 as the Judge had no jurisdiction to compel the respondent to bring back into Court the money paid out to him. The High Court held that "If the view were to prevail, the jurisdiction of the Court under Section 18 might be ousted wherever one of the parties managed to obtain payment of the compensation money awarded by the Collector. There is no reason why the jurisdiction of special Court provided by the Legislature for the adjudication of the question of apportionment should be oustead. The Court has *inherent power* to recall the money improperly paid out. See also *Gangadas Mulji* v. *Haji Ali Mohammed Jalal,* 42 B. 54. When a party has wrongly taken from the Court moneys deposited in Court by his opponents, that Court has *inherent* jurisdiction to enforce a refund of the amount with interest. *Mookoond Lal Pal* v. *Mohomed Sani Miah,* 14 C. 484, *Govindvaman* v. *Sakharam Ramchandra,* 3 B. 42, *Collector of Ahmedabad* v. *Lavji Mulji,* 13 Bom. L.R. 259: 35 B. 255: 10 I.C. 818.

A contrary view has, however, been taken in *Gohar Sultan* v. *Ali Muhommad,* 63 I.C. 1, where it has been held that there is no provision in the L. A. Act empowering a Court to order a person who has received the money awarded to him to refund it. An order made by a Court in a proceeding under the L. A. Act, directing a party to whom a sum of money awarded as compensation under the Act has been paid under a previous order to refund the money, is not an award or a portion of the award within the meaning of Section 54 of the Act and is therefore not appealable. Such an order will, however, be set aside in revision if made without jurisdiction.

Matters to be Considered by Court in Determining Compensation·—See Section 23 and Notes thereunder.

The Decision of the Court and its Effect:—See Section 26 and Notes thereunder.

Proceedings to be in open Court.

22. Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the province shall be entitled to appear, plead and act (as the case may be) in such proceeding.

NOTES.

Nature of Proceedings in Court:—The proceedings under Part III of the L. A. Act, I of 1894 are judicial proceedings and by virtue of Section 54 the Court is subordinate to the High Court in its appellate jurisdiction. The proceedings which culminate in the Court's award commence with the filing of the application under Section 18. As soon as it is filed the matter of the amount of proper compensation assumes a litigious form and becomes a contentious proceeding between the owner and the Collector. It was held by Chandravarkar J. in *re L. A. Act, in re Rustomji Jijibhoy*, 30 Bom. 341, that the application under Section 18 is in the nature of a plaint in a suit. It is the first step in the judicial proceeding. It follows, therefore that the judicial proceedings must be held in *coram publico* and parties are entitled to be represented by pleaders as in a suit and the provisions of the Code of Civil Procedure apply to all the proceedings before the Court under this Act, *vide Section 53*. The proceedings before the Court under the section is of course judicial, and, therefore, entirely distinct from the Collector's proceedings, and in no sense a continuation of such proceedings. Being a judicial proceeding the decision in it must be based on evidence before the Court or on admissions made by the opposite party. *Shawe Gaung* v. *The Collector*, 4 L.B.R. 71.

Delegation of Functions by Court:—The claimants not accepting the collector's award the case was referred to Civil Court. The Subordinate Judge appointed a pleader as Commissioner to take evidence as to valuation, and to report; on receipt of the report the sub-judge heard the parties, accepted the report and decided the case. The Secretary of State appealed to the High Court; held, that under Section 22 of the Land Acquisition Act, the proceeding must be held in *open court*. The sub-judge was not right in delegating his judicial functions to the commissioner. The claimant must be treated as plaintiff and the Government as defendant, the burden of proof being on the plaintiff. *Secretary of State* v. *Baij Nath Goenka*, 12 C.W.N. cc. (notes).

Nature of Enquiry:—The questions referred to by the Collector under Section 18 whether of valuation or of apportionment should be throughly investigated according to judicial principles for trial of suits.

Position of Parties:—When a reference is made to a Civil Court the claimant occupies the position of the plaintiff in a civil suit and the Government as defendant. *Ezra* v. *Secretary of State* 30 C. 36: 7 C.W.N. 249; *Behari Lal Sen* v. *Nundo Lal Gossain*, 11 C.W.N. 430. A Company or a Corpora-

tion for whose benefit land may be acquired is not a necessary party in land Acquisition proceedings. Sec. 50 of the L. A. Act allows such Company or Corporation to appear simply for the purpose of watching the proceedings or aiding the Secretary of State. Such a Company or Corporation has no power to ask for a reference under Sec. 18 of the Act, nor has it the right to appeal against the decree made upon a reference, *In the Matter of the application of the Chairman, Howrah Municipality*, 9 C. W.N. lxvi. *The Municipal Corporation of Pabna* v. *Jogendra Chandra Rakhit*, 13 C.W.N. 116: 4 I.C. 332. The real party to a proceeding in a land acquisition case is not the Collector but the Government. *Collector of Akola* v. *Ananda Rao*, 7 N. L.R. 88: 11 I.C. 690. In the litigation to which the Crown is a proper party, it is the Secretary of State for India who alone can represent it, *Government of Bombay* v. *Esuf Ali Salibhoy* 12 Bom. L.R. 34: 5 I.C. 621.

Burden of Proof:—The onus of proving the value of land acquired lies upon the claimant and to establish the value and selling prices of neighbouring places, it is necessary for him to adduce evidence of numerous or at least sufficiently numerous instances of sales of land in similar conditions and for similar purposes in neighbourhood. *Biswa Ranjan* v. *Secretary or State* 11 I.C. 62. The burden of proof is ordinarily on the claimant in the Court of the special Judge to prove that the valuation made by the Collector is insufficient. But the burden must vary according to the nature of the enquiry made by the collector. If no evidence has been taken by the collector and if no reasons have been given in his decision to support his conclusion the claimant has a very light burden to discharge. The *ipse dixit* of a collector has very little weight and is not *prima facie* evidence of the correctness of his award. The failure of the collector in making a reference under Section 18 of the L. A. Act *to state the grounds* on which the amount of compensation was determined as required by section 19 clause (d) makes it incumbent on the collector to justify the award before the special Judge. *Harish Chandra Neogi* v. *Secretary of State*, 11 C.W.N. 875. Ordinarily when a claimant contests before a Civil Court, the amount of compensation awarded under the L. A. Act by a collector, the burden is upon him to show that the amount so awarded is calculated on a wrong basis, but when such award was made without taking any evidence that burden becomes very light; the mere *ipse dixit* of a Collector has very little weight and is not *prima facie* evidence of the correctness of the award and the Collector has to justify his award under Sec. 19 (1) of the Act. *Marwari Padamji* v. *Deputy Collector, Adoni*, 27 M.L.J. 106: 24 I.C. 411; *Madhusudan Das* v. *Collector of Cuttock*, 6 C.W.N. 406; *Arunchela Aiyar* v. *The Collector of Tanjore*, 96 I.C. 279.

23. *(1)* In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

Matters to be considered in determining compensation.

first, the market-value of the land at the date of the publication of the notification under section 4, sub-section *(1)*;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immoveable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) *bonâ fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

NOTES.

The sovereign power of every state has authority to appropriate for purposes of public utility lands situate within the limits of its jurisdiction. (This power is termed in the United States "eminent domain", *Wheaton's International Law. 4th English Edition. Section 163, p. 260*). But it is not deemed politic to exercise the authority so as to interfere with security in the enjoyment of private property, or to confiscate private property for public purposes without paying the owner its fair value. It is a well recognised canon of construction not to interpret an Act of the Legislature in such a way as to take away property without compensation unless such intention is clearly expressed or is to be inferred by plain implication. *Barrington's* Case (1610) 8 Rep. 138 ; *River Wear Commissioners* v. *Adamson* (1877), 2 App. Cas. 743 : 47 L.J. Q.B. 193 ; *Western Counties Rail Co.* v. *Windson & Annapolis Rail Co.*, (1882) 7. App. Cas. 178 : 51 L.J. (P.C.) 43, *Commissioner of Public Works* v. *Logan* (1903) A. C. 355 : 72 L.J. P. C. 91.

Intention of Sec. 23 :—The intention of Section 23 of the Land Acquisition Act taken as a whole is to provide a complete indemnity to a person whose land is compulsorily acquired. The Sub-clauses give effect to this principle by enumerating the heads under which compensation may be awarded. *Boroda Prosad Dey* v. *Secretary of State*, 25 C.W.N. 677 : 49 C. 83. The principle upon which valuation of property compulsorily acquired should be measured has been laid down by the House of Lords in *Fraser* v. *City of Fraser Ville* (1917 A. C. 194). *"It is the value to the seller of the property in its actual condition at the time of ex-propriation with all its existing advantages and with all its possibilities excluding*

every advantage due to the carrying out of the Scheme for the purpose for which the property is compulsorily acquired." Lala Narsing Das v. *Secretary of State,* 6 L. 69: 29 C.W.N. 822 (P.C.): (1925) A.I.R. (L) 91 (P.C.).

Recognised Methods of Valuation :—The methods of valuation of land acquired under Act I of 1894 may be classified under three heads ; (1) The opinion of valuators or experts, (2) the price paid within a reasonable time in *bona-fide* transactions of purchase of the lands acquired or the lands adjacent to the land acquired and possessing similar advantage and (3) a number of years' purchase of the actual or immediately prospective profit from the lands acquired. It is generally necessary to take two or all of these methods in order to arrive at a fairly correct valuation. Exact valuation is practically impossible, the approximate market-value is all that can be arrived at. *Harish Chandra Neogy* v. *Secretary of State,* 11 C.W.N. 875 ; *Amrita Lal Basak* v. *Secretary of State,* 22 I.C. 78. Compensation payable for land acquired by Government cannot be ascertained with mathematical accuracy. The Court has to see whether the evidence adduced displaces the amount awarded by the Collector. The valuation of the Collector is not displaced by evidence of value given by the claimants which is so exaggerated and reckless that no reliance could be placed on them. *F. W. Higgins* v. *Secretary of State,* 22 C.W.N. 659: 46 I.C. 221. The recognised modes of ascertaining the value of the land for the purpose of determining the amount of compensation to be allowed under the L. A. Act were (1) If a part or parts of the land taken up has or have been previously sold, such sales are taken as fair basis upon which making all proper allowances for situation etc. to determine the value of that taken (2) to ascertain the net annual income of the land and to deduce its value by allowing a certain number of years' purchase of such income according to the nature of the property (3) to find out the prices at which lands in the vicinity have been sold and purchased and making all due allowances for situation, to deduce from such sales the price which the land in question will probably fetch if offered to the public. *In re the Lands Acquisition Act,* 1870, *Munji Khetsey,* 15 B. 279.

The Duty of Court :—Where a claimant fails to prove the value of the land at the rate or upon the principle claimed by him the Judge is not bound to accept the award, but it is his duty, having regard to all the evidence and to all the circumstances of the case, himself to determine what is the fair compensation for the land acquired. Where the condition and ameneties of the land have completely changed and the land has gone up greatly in value the following three elements should be taken into consideration—(a) the position of the land acquired,

its general advantage, and its special adaptibility for the use of the owners, (b) the purpose for which that land can be utilised in the most lucrative way, (c) the damages sustained by the claimant by reason of the acquisition injuriously affecting his other property. *Hooghly Mills Co.* v. *Secretary of State,* 12 C.L.J. 489: 8 I.C. 800. It is the duty of the Court to determine whether the claimant has the right to receive compensation for the land or building thereon or other interests in it in the capacity which he avers. *Government of Bombay* v. *Esuf Ali Salibhoy,* 12 Bom. L.R. 34: 5 I.C. 621.

Alterations in Law:—Para 7 of the Preliminary Report of the Select Committe in the Bill to the Land Acquisition Act of 1870 presented to the Council of the Governor-General of India on the 2nd February 1893 lays down that, "In part III we have made some alterations of the Act in detail. Section 24 of the Act (X of 1870) defines matters to be considered in determining compensation. The committee are of opinion that the Bill introduced last year rightly required the market-value to be taken at the time of the declaration under section 6 and not as in the Act, at the time of the award, but this change in the law required the addition to the section of a clause bringing under the consideration of the Court any diminution in the profits of occupation during the period between the declaration and the Collector's entry into possession, as also the value of any standing crops or trees that may be in the land when he takes possession. The amendment is effected by clause (6). It appears more convenient to insert here than in a later part of the Act the instruction contained in Section 42 of the Act that the addition to the amount of any compensation due to the owners of the land acquired of fifteen per centum on the market-value shall be given in consideration of the compulsory nature of the acquisition. We have, accordingly, added a clause to this effect in the Section by which we amend Section 24 of the Act and the Collector or Judge making the award will find embraced in a single Section the whole of the details required for the completion of his estimate of compensation." This is done by Section 23, sub-Section (2).

Definition of Market-Value:—"The Section as drafted in the Bill, contained a definition of 'market-value' to which exception has been widely taken, as inapplicable to any part of the country, and when applicable, open to much objection. We agree with the Lieutenant-Governor of the Punjab and the High Court of Bengal that no attempt should be made to define strictly the term in the Act, and that *the price which a willing vendor might be expected to obtain in the market from a willing purchaser,* should be left for the decision primarily, of the Collector and, ultimately of the Court". Again in para 14

of the Further Report of the Select Committee dated 23rd march 1893 it is stated that "We have again considered the question of definition of the term market-value but we adhere to the opinion of our Preliminary Report that it is preferable to leave the term undefined. No material difficulty has arisen in the interpretation of it; the decisions of several High Courts are at one in giving it the reasonable meaning of the price a willing buyer would give to a willing seller ; but the introduction of a specific definition would sow the field for a fresh harvest of decisions ; and no definition could lay down for universal guidance in the widely divergent conditions of India any further rule by which that price should be ascertained".

Further Amendment :—By sec. 7 of Act XXXVIII of 1923 the words "at the date of the publication of the *notification under section 4, sub-section (1)*" have been substituted in the place of the words "at the date of the publication of the *declaration*," in section 23, cl. (1).

The Reasons for the Amendment :—This amendment was found necessary by reason of introduction of the New Section 5A by Act XXXVIII of 1923 by which any person interested in any land, which has been notified under section 4, sub-section (1) as being needed or likely to be needed for a public purpose or for a company may within thirty days after the issue of the notification, object to the acquisition of the land. And every objection so made shall be made to the Collector in writing and the collector shall give the objector an opportunity of being heard and shall after hearing all such objections and after making such further enquiry, submit the case for the decision of the Local Government. The Local Government, if satisfied after considering the report, if any, of the Collector under Section 5A, that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect. Considerable time may elapse between the date of the publication of notice under Section 4 (1) and the publication of declaration under Section 6 ; and the Legislature intends that in case the objections made under Section 5A be overruled by the Local Government the objector could not take advantage of the lapse of time which may have the effect of considerably enhancing the value of the land by reason of the improvement to be effected by the proposed acquisition.

Market-Value Defined :—Apart from the compensation to which a claimant in any particular case may be entitled on other heads, the compensation to be awarded for the land

acquired is under Section 23 Cl. 1 of Act I of 1894, the market-value of the land at the date of the publication of the declaration [now of notice under Section 4 (1)]. But the meaning attached to the term "market-value" is not defined in the Act nor is any concise statement of it to be found in any judicial decision in this country. The definition of "market-value" of a property as laid down by the American Courts in condemnation (*i.e.*, acquisition) proceedings is "the price which it will bring when it is offered for sale by one who desires, but is not obligated to sell, and is bought by one who is under no necessity of having it." *Stewart* v. *Ohio Pac. R. R. Co.*, 38, W. Va. 430: 18 S.E. 604. *Lewis on Eminent Domain 2nd Ed. S. 478 ; Pittsburgh etc. Railway Co.* v. *Vance*, 115 Pa. St. 325: 8 Atc. 764 ; *R. H. Wernicke* v. *Secretary of State*, 13 C.W.N. 1046: 2 I.C. 562. The "market value" of land may be roughly described as the price that an owner willing, and not obliged to sell, might reasonably expect to obtain from a willing purchaser with whom he was bergaining for the sale and purchase of the land. *Koilas Chandra Maitra* v. *Secretary of State*: 17 C.L.J. 34 ; *Giris Chunder Roy Choudhury* v. *Secretary of State*, 24 C.W.N. 184: 31 C.L.J. 63: 55 I.C. 150 ; *Mohini Mohan Banerjee* v. *Secretary of State*, 25 C.W.N. 1002: 34 C.L.J. 188 ; *Tulshi Makhanie* v. *Secretary of State*, 11 C.L.J. 408 ; *Sadhu Charan Roy Choudhury* v. *Secretary of State*, 31 C.L.J. 63.

Bombay :—By "market-value" is meant the price which would be obtainable in the market for that concrete piece of land acquired with its particular advantages and particular drawbacks, both advantages and drawbacks being estimated rather with reference to commercial value than with reference to any abstract legal right. *Bombay Improvement Trust* v. *Jalbhoy*, 33 B. 483 ; *Collector of Belgaum* v. *Bhima Rao*, 10 Bom. L. R. 657: 11 Bom. L. R. 674. The expression "market-value" as used in Section 23 of the L. A. Act (1894) means the value which a parcel of land would realise if sold in the market. The seller must be a willing seller, a forced sale affords no criterion of market-value. The purchaser also must be a willing purchaser, and further, he must be a prudent purchaser, that is, one who makes his offer after making necessary enquiries as to the value of the lands ; an offer made by one who knows nothing of the value of the land in the locality and who makes no enquiries about it, affords, no test of market-value. The market-value is the value that can be realised on a sale in the open market. The market may be dull or brisk. But whether it be dull or brisk it cannot be excluded from consideration. *Government of Bombay* v. *Mondigar Aga*, 48 B. 190: 25 Bom. L.R. 1182.

Patna :—The principle laid down in the L. A. Act is that the Court has to ascertain what the "market-value" of the land is, that is to say, what value would be paid in the market by a purchaser of good ability and well qualified to put the land to the best advantage. *Birbar Narayan Chandra* v. *Collector of Cuttack*, 2 P.L.J. 147: 39 I.C. 14.

Oudh :—"Market-value" means the prices that would be paid by a willing buyer to a willing seller, when both are actuated by business principles prevalent at the time that the transaction takes place in the locality in which it takes place. *Birjrani* v. *Deputy Commissioner, Sitapur*, 28 O.C. 89: 57 I.C. 301.

Sindh :—The "market-value" of the land may be roughly described as the price that an owner who is willing but who is not obliged to sell the land might, consistently with reason, expect to get from a willing purchaser with whom he is bargaining for the sale and purchase of the land: *Khusiram* v. *Asst. Collector of Shikapur*, 1925 A.I.R. (S) 112: 17 S.L.R. 228.

Market Value at the Date of the Publication of Notification under Sec. 4 :—It is important to bear in mind that the market-value of the land acquired is to be determined as it was at the time of the publication of the notification under Section 4 of the Act. The principle of compensation is indemnity to the owner, and the basis on which all compensation for lands required or taken should be assessed is the value to the owner *at the date of notice to treat* in England and *the date of the publication of notice,* under Section 4 (1) of the L. A. Act I of 1894 in India and not their value when taken, though under Act X of 1870, by Sections 13 and 24, the market-value of the land at the time of awarding compensation had to be taken into consideration. Time, when the land was acquired was the time for ascertaining its value. *Monmotha Nath Mitter* v. *Secretary of State*, 1 C.W.N. 698. The question is not what the persons who take the land will gain by taking it, but what the person from whom it is taken will lose by having it taken from him. In Stebbing's Case (1870) L.R. 6 Q.B. 37, Cockburn C. J. says in his judgment that, "When Parliament gives compulsory powers and provides that compensation shall be made to the person from whom property is taken for the loss he sustains, it is intended that he shall be compensated to the extent of his loss, and that his loss shall be tested by what was the value of the thing to him not by what will be its value to the person acquiring it." In India, it has been held in *Secretary of State* v. *Kartic Chunder Ghosh*, 9 C.W.N. 655, that in calculating the amount of compensation to be awarded for land compulsorily acquired by Government it is not permissible to a judge to take the amount which the claimant had expended in

the purchase and improvement of the land, as if it had been invested on loan since the date of such expenditure at the prevailing rate of interest and to treat the total amount so arrived at as the market-value of the land.

How should the Market Value be Ascertained :—It has been pointed out in judicial decisions in Bombay and in Calcutta (*Collector of Belgaum* v. *Bhimrao,* 10 Bom. L.R. 657 ; *Bombay Improvement Trust* v. *Jalbhoy,* 33 B. 483 : 11 Bom. L. R. 674 ; *Government of Bombay* v. *Esufali,* 34 B. 618 : 12 Bom. L. R. 34 ; *Dunialal* v. *Gopinath,* 22 C. 820) that the value of the land should *ordinarily* be determined as a whole and the question of apportionment of the compensation awarded amongst claimants of different degrees should thereafter be taken into consideration. This view, however, has not *always* been accepted in practice, and the procedure adopted in the case of *Girish Chundra Roy Choudhury* v. *Secretary of State,* 24 C.W.N. 184, has been followed as a matter of convenience, namely, that the market-value of the interests claimed by persons who held interests of different degrees in the property acquired has been determined successively and independently of each other.

Modes of Estimating the Market Value :

I. Rental Basis :—Garth C. J. in *Premchand Boral* v. *The Collector of Calcutta,* 2 C. 103, said that "In this case I think that the learned judge in the Court below has not done full justice to the owners of the property. He has substantially adopted the valuation of the Collector and has made his award upon the supposition that the fair mode of estimating the price of the property in the market is to capitalize its present rental at so many years purchase. *This is not a fair* way of arriving at the market value. Where Government takes property from private persons under the statutory powers, it is only right that these persons should obtain such measure of compensation as is warranted by the current price of similar property in the neighbourhood, without any special reference to the user to which it may be applied at the time when it is taken by the Government, or to the price which its owners may previously have given for it. The fairest and most favourable principle of compensation to the owners is what is the market value of the property *not according to its present disposition but laid out in the most lucrative and advantageous way in which the owners could dispose of it.*" In *Re Merwanji Cama* (1907) 9 Bom. L. R. 1232 it was contended that the personal incapacity of the owner to realise the possibilities of development is to be considered in determining the compensation to be given to him. This view has been negatived. *Government* v. *Doyal* (1906)

9 Bom. L. R. 99. Profit from the most advantageous disposition of land is one test for determining its market price. *The probable use of land in the most advantageous way in accordance with the use already made of neighbouring lands* leads to speculative advance in prices to which regard should be paid. The utility of land is an element for consideration in estimating its value, that is, the utilities which may be calculated by a prudent business man. *Fink* v. *Secretary of State,* 34 C. 599; *Rajendra Banerjee* v. *Secretary of State,* 32 C. 343. In the case of land in the vicinity of town, where building is going on, it would be unjust to adopt the second method of valuation *viz*:—to ascertain the net annual income of the land, and to deduce its value by allowing a certain number of years' purchase of such income according to the nature of property, if there is a fair *probability of the owner being able, owing to its situation, to sell or lease his land for building purposes.* The value of the land should be determined not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner can dispose of it. *In re Dorabji Cursetji,* 10 Bom. L. R. 675; *In re the L. A. Act 1870 Munji Khetsy,* 15 B. 279; *Trustees of Bombay* v. *Karsandas,* 33 B. 28. The income of a property whether actual or imaginary is, no doubt, one of the recognised starting points for a valuation, but it is a mistake to think that it is the only element to be taken into consideration. *Gurudas Kundu* v. *Secretary of State,* 18 C.L.J. 244. In the case of residential property to endeavour to arrive at the market value solely on the basis of an hypothetical rent may work grave injustice to the owner. There are commodities which may possess a value in the market not for the return they give on capital invested, but for the advantages and enjoyment which accrue from their possession. Residential property in the sense of property which a purchaser wishes to acquire for his own residence is such a commodity. *In the matter of the L. A. Act. In the matter of Government and Sukhanand Gurumukhrai,* 34 B. 486: 11 Bom. L.R. 1176. The owner of a house with a compound attached to it let out a large part of the compound to agricultural tenants whom he allowed to acquire occupancy rights therein; *held* on a question arising as to the principle of assessing compensation for the portion, that so far as the owner's interest was concerned, compensation was properly calculated at so many years' purchase of the annual profits actually received by the owner at the time of the sale. The owner might not in the circumstances be allowed to claim compensation as for a building site. *L. W. Orde* v. *Secretary of State,* 40 All. 367. Tribunals assessing compensation must take into accounts not only the present purpose to which the land is applied but also any other more beneficial purpose to which in the course of events, it

might within reasonable period be applied and just as an owner might do if he were bargaining with a purchaser in the market. Where it appeared that the land acquired could not profitably be used as an independent brick-field, but there were trustworthy evidence to show that if the acquired lands were thrown into the market, adjoining brickfield owners would have come forward to purchase them or take lease of them for inclusion in their brick-fields, *held* that the Court was justified in assessing the value of the lands as brick-fields. *Mohini Mohan Bannerji* v. *Secretary of State*, 25 C.W.N. 1002.

Determination of the Lucrative and Advantageous Disposition :—In valuing land which has been taken for public purposes under the L. A. Act the first and most favourable principle of compensation is to enquire what is the market-value of the property, *not according to its present disposition but laid out in the most lucrative and advantageous way in which the owner could dispose of it.* The most lucrative and advantageous way is to be determined with reference to its future utility, but it must not be entirely conjectural. *Alaul Huq* v. *Secretary of State*, 11 C.L.J. 393. As was observed in the case of *Rajendra Nath Bannerjee* v. *Secretary of State*, 32 C. 343, future utility is a thing that people have an eye to in buying land and the market-price of the land is affected by it ; such future utility must however be estimated by prudent business calculations and not by mere speculative and impractical imagination. *Alaul Huq* v. *Secretary of State*, 11 C.L.J. 393 : 3 I.C. 277 ; *Fink* v. *Secretary of State*, 34 C. 599. The same principle has also been adopted by the Bombay High Court in *In Re Dorabji Cursetji Shroff*, 10 Bom. L.R. 675 ; *Trustees of Bombay* v. *Karsondas*, 10 Bom. L.R. 488 ; *In Re Dhanjibhoy Bomanji*, 10 Bom. L.R. 701 ; *Collector of Poona* v. *Kashinath*, 10 B. 585 and in *Munji Khetsey*, 15 B. 279. In the last case it was pointed out that in the neighbourhood of a town where building was going on, it would be unfair to assess the value of land upon its present income if there is a fair probability of the owner being able, according to its situation, to sell or lease the land for building purposes. Substantially the same principle was recognised by the Judicial Committee in *Secretary of State for Foreign affairs* v. *Charlsworth Pilling* (1901) App. Cas. 373 : L.R. 28 I.A. 121 : 26 B. 1. To determine the market value of the land, one has to find out the price which would be obtainable in the market for the concrete parcel of land with its peculiar advantages and its peculiar drawbacks, both advantages and drawbacks to be estimated rather with reference to commercial value than with reference to any abstract legal rights. In other words, the future utility must be estimated by prudent business calculation and not by mere speculative and impracticable imagination. A

hypothetical building scheme, considered as the basis of market-value, affords generally evidence of a remote, speculative and conjectural character. *Raghunath Dass* v. *Collector of Dacca,* 11 C.L.J. 612 ; *Government of Bombay* v. *Merwanji,* 10 Bom. L.R. 907. The tribunal assessing compensation must take into account, not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied, just as the owner might do if he were bargaining with a purchaser in the market. Whether or not the particular way, in which it is claimed that the land if so laid out could be disposed of to the best advantage to the owner, is one appropriate to prevailing condition is a question of fact to be decided according to the circumstances of each case ; *Mohini Mohon* v. *Secretary of State,* 34 C.L.J. 186: 25 C.W.N. 1002. The general demand for land, and the consequent reflex action on the price of all classes of lands is a factor in the calculation of the market-value of lands under acquisition. *Fink* v. *Secretary of State,* 34 C. 599. Sargeant, C.J., in the case of *Collector of Poona* v. *Kashinath,* 10 B. 588, observed, that "both parties agree that the principle upon which compensation should be assessed is correctly stated in *Premchand Boral* v. *Collector of Calcutta,* (2 C. 133), *viz.,* that the value of property should be determined not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner could dispose of it, which, in the present case, would be by laying it out for building purpose. The question, then is, what would be its market-value if so laid out. It is not idle speculation or unpractical imagination that must rule estimates for the purpose of awarding compensation to the owner of land being compulsorily acquired, but it is prudent business considerations such as would prevail with an intending purchaser at the imaginary market which would have obtained if the land had been announced for sale at the time of its compulsory acquisition, that must have the greatest weight. *Khusiram* v. *Assistant Collector, Shikarpur,* (1925) A.I.R. (S.) 112. In *Hem Chandra Chowdhury* v. *Secretary of State,* 31 C.L.J. 204, the land when acquired was vacant. Both the Collector and the L. A. Judge in making the award assumed the existence of a hypothetical tenant on each plot and calculated the respective values of what were designated as landlord's interst and raiyats' interest. The total of the sums which represented the value of these interests was taken as the value of the land: *Held,* that the award was based on unsound principles. How much was recoverable by a landlord from a hypothetical tenant might be determined with some approach to accuracy from the rent receivable by him. But the exact value of the Raiyats' interest was dependent on a number of unknown factors.

Demand :—The most important point in considering the question is whether there is any particular *demand* for land for building speculation. If there is evidence that there is a demand for lands of that description in the locality in which the land acquired is situate, certainly it is a most important factor to be taken into consideration for ariving at the market-value of the property. Otherwise it is merely "impractical imagination." In awarding compensation for agricultural land acquired by the Government, the Court should take into consideration the probability, if any, for a demand for the land in question for building purposes. *Secretary of State* v. *Gopal Singh*, 1 I.C. 210 ; *In re Merwanji Muncherji Cama*, 9 Bom. L.R. 1232. Where claimants demand prices for their land as building land they must show that it either is building land or is likely to become building land at an early date. *Secretary of State* v. *Gobinda Ram*, 11 I.C. 838. An award of compensation cannot be made on speculative and hypothetical schemes of the future development of the land. *Basavarajee Krishna Row* v. *Head Asst. Collector, Bezwada*, 15 I.C. 672 ; *Secretary of State* v. *Nanak*, *61 P.W.R. 1916*: 126 P.L.R. 1916: 35 I.C. 283. Although in ascertaining the market-value of land sought to be acquired under Act I of 1894 the general principle to be applied is that the value of the land should be calculated with reference to the most lucrative and advantageous way in which the land might be used, if it is apparent that the use of such land for some special purpose, *e.g.*, as building sites would never be permitted, the land should not be valued as if it could be utilised for such purpose. *Stebbing* v. *Metropolitan Board of Works*, (6 Q.B. 37) ; *Ujagar Lal* v. *Secretary of State*, 33A 733. In computing the value of a house in a town of growing importance, twenty times the annual rental value, and not what it would cost to build a house of that description should be allowed, and the annual rental should not be merely the rent which the house is commanding at the time but what it is likely to fetch in future *minus* the cost of ordinary repairs, which a tenant would be likely to ask for and get from a landlord. *Rajammal* v. *Head Quarters Deputy Collector, Vellore*, 25 I.C. 393.

Adaptibility or Potential Value :—The claimants are entitled to claim that the compensation should be awarded to them on the footing that the "value of land should be determined, not necessarily according to its present disposition but laid out in its most lucrative and advantageous way in which the owner can dispose of it." When the land was acquired for the purpose of making a reservoir and it had a *special adaptibility* for the same, it was held that the tribunal assessing compensation ought to include in its consideration the

special adaptibility as an element of value. *In Re Lucas and Chesterfield Gas and Water Board,* (1909) 1 K.B. 16. If the land has, what may be called an adventitous value, i.e., something beyond its agricultural or normal value—and that is a marketable value in this sense that persons, wishing for a purpose for which the land is particularly applicable to purchase that land—then the arbitrator has a fair right to take that into consideration ; it is a matter, no doubt, contingent, but still it is a matter which is not to be ignored or put out of consideration. Where a piece of land is compulsorily acquired by Government for quarrying purposes its special adaptibility for quarrying is an element for consideration in fixing the amount of compensation. *Daya Khushal* v. *Asst. Collector, Surat,* 38 B. 41 ; *Government of Bombay* v. *N. H. Moss,* 47 B. 218 ; *Secretary of State* v. *Shan Mugaraya Mudaliar,* 16M. 369. The proposition may be taken to be well established that the special, though natural, adaptibility of the land for the purpose for which it is taken, is an important element to be taken into consideration in determining the market-value of the land. "It is quite true" observed Grave, J. in *Assalinsky* v. *Manchester Corporation,* (Browne and Allon's Law of compensation 2nd. Ed. 657) "that land might be rightly valued at more than its value as agricultural land, if the land had any other capabilities, for railway land, or irrigating purposes, as for water-works, or for any thing else, and they are reasonable and fair capabilities not far-fetched hypothetical capabilities but reasonably fair contingencies. These are fair things to be considered by an arbitrator." In *McKinney* v. *Nushville,* 102. Tenn 131. a certain property was by reason of its location more valuable for saloon purposes than any other, and at the time of condemnation (*i.e.,* acquisition) proceedings it was under lease for a term of five years for a good annual rental, and was then used to carry on saloon business. It was contened on behalf of the owner that he was entitled to compensation on the basis of annual rental, which indeed was the highest rental which any one gives for the property. The Supreme Court of Tennesse held that in estimating the market-value of the property, all the Capabilities of the property, and all the legitimate uses to which it may be applied or for which it is adapted are to be considered and not merely the condition it is in and the use to which it is at the time applied by the owner. In *R. H. Wernicke* v. *The Secretary of State,* 13 C W.N. 1046, the High Court in delivering the judgment held "the proper principle is to ascertain the market-value of the land taking into consideration the special value which ought to be attached to the special advantage possessed by the land ; namely its proximity to the Lebong Cantonment, its special adaptibility for a rifle range, and the unique

character of such adaptibility." In *Mohini Mohan Banerjee* v. *Secretary of State*, 25 C.W.N. 1002, Mookerjee J., observes "The recognition of this potential value, as it has been called, may be found in a variety of cases. *R. V. Brown*, L.R. 2 Q.B. 630 (1867) (potential value of agricultural land for building purposes) *Ripley V. G. N. Ry. Co.*, L. R. 10, Ch. 435 (contiguity of land to a reservoir making it suitable for building a mill) ; *Brown* v. *Commissioner for Railways*, 15 App. Cas. 240 (1890) (future profitable working for mine) ; *Ossalensky* v. *Corporation of Manchester*, Hudson On Compensation 1546: Brown and Allan on Compensation 659 ; (contiguity of land to a lake making it specially adaptible for use as a reservoir) ; *Riddel* v. *New Castle Water Co.* (1879) Brown and Allan on compensation 678 ; (1879) 90 L. T. 44n. (fitness of land for reservoir) ; *In re Gough and Aspatria* (1903) 1 K.B. 574: (1904) 1 K.B. 417 (fitness of land as base for water supply) ; *Sidney V. N. Rail Co.* (1913) 3 K.B. 629 (adaptibility of land for Railway purposes) ; *Ciders Rapids Manufacturing and Power Co.* v. *Lacoste* (1914) A. C. 569 (suitability for development of water power) ; The principle has also been applied where the land of the claimant, though not in itself adaptible for a reservoir, is so adaptible in conjunction with other adjacent lands belonging to other owners. *Mayor Tynemonth* v. *Duke of New Castle* (1903) 89 L.T. 557 : 19 T.L.R. 630. Examples of the doctrine of potential value and special adaptibility may also be found in the case of *Hughly Mills* v. *Secretary of State*, 12 C.L.J. 489 ; *Rajendra Nath* v. *Secretary of State*, 32 C. 348 ; *In Re Munji Khetsey*, 15 B. 279 ; *Government* v. *Doyal Mulji*, 9 Bom. L. R. 99 ; *In Re Dhanjibhoy*, 10 Bom. L.R. 701 ; *In Re Dorabji Cursetji*, 10 Bom. L.R. 675 ; *In Re Sorabji Jamsedji Tata*, 10 Bom. L.R. 696 ; *Daya Khushal* v. *Assistant Collector, Surat*, 38 B. 37 : 21 I.C. 320 ; *Abdul Rahim* v. *Secretary of State*, 1926 A.I.R. (L) 618. The true rule was tersely stated by Lord Dunedin in pronouncing the opinion of the Judicial Committee in two recent cases. In *Ceders Rapids Manufacturing and Power Co.* v. *Lacoste* (1914), A.C. 569, he formulated the proposition that "the value to be paid for is the value to the owner as it exists at the date of the taking ; *such value exists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages* that falls to be determined." In *Odlum* v. *City of Vancouver* (1915) 85 L.J.P.C. 95, he added "the necessary *corollary* that while all opportunity of employment for a certain purpose in regard to the position of the land to be acquired is to be taken into account, there must come a point when the opportunity becomes so remote as to be negligible. This brings into clear relief the fundamental importance of the test that the operative effect of special adaptibility or future utility must be

estimated, not by idle speculation and unpractical imagination but by prudent business considerations such as would weigh with an intending purchaser at the imaginary market which would have ruled had the land been exposed for sale, when it was subjected to compulsory acquisition." The question is whether there is a market at all for a tract of land for use for a specified purpose. In the present case there is no room for controversy that there is trustworthy evidence to show that if the acquired lands had been thrown into the market, adjoining brick-field owners would in all probability have come forward to purchase them or to take leases of them for inclusion in their brick-fields. The District Judge has thus rightly concluded that there was reasonable probability that the lands might have been taken up by the adjoining owners for the extension of this brick-field and this possibility must be taken into consideration in calculating the amount to be awarded as compensation upon compulsory acquisition. If, however the special value exists only for the particular purchaser who has obtained power of compulsory purchase it cannot be taken into consideration in fixing the price. But where the special value exists also for other possible purchases, the owner is entitled to have this element of value taken into consideration. *Thareesaruma* v. *Deputy Collector, Cochin,* 45 M.L.J. 339: 18 L.W. 356: (1923) M.W.N. 682: 33 M.L.T. 48: 77 I.C. 347; *Gobindaram Vorhomal* v. *The Assistant Collector, Sheekarpur,* 79 I.C. 376; *Raja of Pittapuran* v. *Revenue Divisional Officer, Coconada,* 42 M. 644: 21 L.W. 88: 86 I.C. 238: 1925 A.I.R. (M) 818. The essential element to be taken into account in determining the market-value of land compulsorily taken is the fact of its probable user. *In the matter of Government and Dayal Mulji,* 9 Bom. L.R. 99. Occupancy right has been laid down to be to ascertain what would be the market value if they were put to the most lucrative use having regard to their condition and when they were acquired for building purposes they ought to be valued as building sites and not merely as wet lands; the fact that neither the landlord nor the tenant can utilise the land for building purposes without the concurrence of the other does not make any difference. *Collector of Belgaum* v. *Bhima Rao,* 10 Bom. L.R. 657; *Collector of Dacca* v. *Hari Das Bysack,* 14 I.C. 163. If the land acquired has potential value as a mill site this should be taken into consideration in fixing the compensation though it may be in close proximity to the Gun and Shell Factory. *Secretary of State* v. *Nores Chandra Bose,* 44 C.L.J. 1: (1926) A.I.R. (C) 1000.

Lands Situated in a Municipal Town:—Where land acquired under the L. A. Act is situated in a Municipal town and has buildings and trees upon it, the proper method of calculating the amount of compensation to be paid therefor, in

the absence of any positive evidence of the prevailing price of large tracts of adjoining lands, is to capitalise the letting value of the land, add to it the value of the buildings and trees standing thereon and to add 15% on the total value of the property for compulsory acquisition. *Krishna Bai* v. *Secretary of State*. 42A 555: 18 A.L.J. 695: 57 I.C. 520. The onus of proving the value of land acquired lies upon the claimant and to establish the value and selling prices of neighbouring lands, it is necessary for him to adduce numerous or at least sufficiently numerous instances of sales of land in similar conditions and used for similar purposes in the neighbourhood. In the absence of such evidence the Court must fall back on the rental value, which is the standard generally taken for sales of house property in the European quarters of Calcutta. The amount which a claimant has succeeded in procuring from time to time from his house in its ordinary state of repairs in which he keeps it, is to be taken into account and some allowance is to be made for possible future improvements, 20 years' purchase of the net profits after deducting a certain percentage for repairs and taxes. *Biswa Ranjan* v. *Secretary of State*, 11 I.C. 62. An occupancy raiyat, occupying land in Calcutta, which is not situated in the midst of agricultural land and where changing conditions have given it an increased value as being a prospective building site, is entitled only to the capitalized value of the tenant's interest. The landlord is to get the whole of the balance and not only a sum representing the capitalized value of the rent and an estimated sum for the value of possible enhancement in the future or possible for future. *Nibas Chandra Manna* v. *Bepin Behari Bose*, 53 C. 407.

Lands with Buildings:—In calculating the amount of compensation to be awarded upon acquisition of lands with buildings therein the rental should be the basis of calculation, so that after arriving at the net rental what has to be ascertained is the return investors in this class of property expect, for that serves to determine the number of years' purchase it is proper to allow, after giving due weight to any special conditions that may affect the property advantageous or otherwise. As to the condition that the property was at the date of declaration capable of fetching a higher rental which was apparent from the fact that the rents of the property had been steadily rising for 16 years previous, held, that though for the purpose of the enquiry it was legitimate to have regard to the past history of the rental, it could not be taken for granted that enhancement would continue possible for ever, and still less there was such a certainty of this as to make it a basis of fixing a higher price. *Raghunath Das Gopal Das* v. *Secretary of State*, 7 Bom. L.R. 569.

Antiquities, Ancient Monuments, Granites and Gravels :—The Government having commenced proceedings to acquire a plot of land containing granite quarries besides ancient temples and sculpture, a reference was made to the District Judge as to the amount of compensation to persons interested in the land ; *Held* (1) with regard to the nature of the property that only the value of the stone quarries as yielding profit could form the subject of assessment, and the value of antiquities could not, for, under the circumstances, no market value could be assigned to the antiquities ; (2) the right, if not the only, course of proceeding was to estimate the rent at which possibly the whole plot might be leased, on the basis of how much rent a portion of the plot when leased for quarries had in fact obtained for the Zamindar ; (3) to calculate the purchase money at 25 years, of such rent ; (4) though quarrymen had been employed and had earned money on the plot, they were not interested in it in the sense intended by the Act and their earnings in which the Zamindar was not interested could not enter into the question of compensation and increase the award, *Secretary of State* v. *Shanmugarya Mudaliar,* 16 M. 369. Section 21 of the Ancient Monuments Preservation Act (VII of 1904) applies to the purchase of moveables, antiquities or relics and the compensation which may have to be paid for incidental damage caused by the removal or protection of such objects of historical interest or art value. In ascertaining the market value of such moveable antiquities and the amount of compensation to be paid to adjacent owners for acts done under the Act, such acts being indicated and by implication defined in Sec. 20, only the provisions of the L. A. Act, enumerated in Sec. 2 are to guide the Court. Where, however, Government is actually acquiring immoveable property under Section 10 of the Ancient Monuments Preservation Act, the owners of the property have the full rights which they would have under the L. A. Act, including the right to appeal to the High Court from an award of the Court provided by Sec. 54 of the latter Act, *Vishnu Narain Vaidya* v. *The District Deputy Collector, Kolaba,* 42 B. 100 : 43 I.C. 480. Government had been taking gravel from a certain piece of land and paid the owner at a certain specified rate. It was finally decided to acquire the land and compensation was assessed by the District Judge at twenty times the average income actually obtained by the owner from lands of similar description and area. The owner claimed compensation for the entire amount of gravel contained in the land at the rate at which the Government had been paying, Held that the method of assessment adopted by the District Judge was correct. *Birbar Narayan Chandra* v. *Collector of Cuttack,* 2 Pat. L.J. 147 : 38 I.C. 14. Land of Toka tenure, situated at a Hill on the North of Bombay was compulsorily acquired by

the Government of Bombay in pursuance of a notification. The annual rent payable to the Government was Rs. 18-5-5p. But Government had right to increase the assessment in the year 1929-30 to the rate of 4 per cent on the value of the land. In the proceedings before the L. A. Officer the claimant and the Government proceeded to value the property on the assumption that the land was in the quarry-region and that quarrying could be carried on to considerable depth. Accordingly the L. A. Officer calculated the value of the land on hypothetical estimates of the value of the marginal land to be left by the claimant and the values of the Moorun and stone, the said values being written back for a certain number of years at a certrain percentage. The matter being referred to the High Court at the instance of the claimant, the trial judge came to the conclusion that in view of the experiments made on the land it did not appear that as a business proposition the land in reference would be used as a quarry but that as both parties had since the date of notification proceeded on the valuation of the property as a quarry the basis of valuation should not be rejected. He varied the estimate of the L. A. Officer, however, and awarded the claimant Rs. 42,969-12-0 which included an allowance for the flat land when levelled. On appeal by the Government held, setting aside the award of the trial judge, that as the evidence showed that the land could not be valued on a quarrying basis and that the claimant has failed to establish that a purchaser taking into consideration the potentialities of the land whether for building or quarrying purposes, would be prepared to pay anything more than 7/8/- a square yard according to which the value of the land would not exceed the estimate of the acquiring officer, such estimate must be accepted as correct. *Government of Bombay* v. *N. H. Moss,* 47 Bom. 218. In valuing the potentialities of the land for quarrying purposes a Court should avoid, as far as possible, hypothetical speculations and rely on admitted and proved facts. *L. A. Officer, Bandra* v. *Gulam Hossin Ahmad Gomajee,* 87 I.C. 581 : (1925) A.I.R. (B) 433 : 96 I.C. 284 ; *Daya Khushal* v. *The Assistant Collector Surat,* 15 Bom. L.R. 845.

Brick-Fields :—In *Collector of Chinglepút* v. *Kadir* (1926) A.I.R. (M) 732, it was urged on behalf of the claimant that he is entitled to compensation on the basis of the profit which he was likely to make by converting clay on his land into bricks and selling bricks in the open market. This contention was held to be unsound. "It is undoubtedly true that in awarding compensation, any and every element of value which the land possesses to the owner must be taken into consideration in so far as it increases the value to him. *In Re Lucas* v. *Chesterfield Gas and Water Board,* 1909, 1 K.B. 16. In other words not the land alone but the land with all its potentialities

must be considered in assessing the value." In *Commissioners of Inland Revenue* v. *Glasgow and South Western Railway Company,* (1887) 12 A.C. 315, there is no authority, however, for holding that the claimant is entitled in such circumstances as exist in the present case, for the hypothetical profit which, in certain events he is likely to make. It is impossible to accede to the contention that the claimant must be awarded compensation on the basis of loss of profit. The rule applicable to cases of this kind is clearly laid down in *Eden* v. *N. W. Railway Company* 1907, A.C. 400. The true measure of compensation as Lord Atkinson, in his judgment says, "is the price the minerals would fetch as and when won and raised less the cost of working the mine winning and raising them." The claimant will undoubtedly be entitled to the value of the total quantity of the clay that can be raised on the spot.

Valuation of Lands Subject to Restricted user:—In the cases of *Hilcoat* v. *Archbishop of Canterbury & York* (1850) 10 C.B. 327 ; *Stebbing* v. *Metropolitan Board of Works,* (1870) L.R. 6 Q.B. 37 and In *Re City and South London Railway Company* (1902) 18 T.L.R. 612: (1903) 19 T.L.R. 363, the question was raised as to the manner in which valuation is to be made of land acquired when it is subject to restrictions as to use, for instance, land used as a Church-yard or a grave-yard. In the first case it was held by the Court of Common Pleas that the value was to be determined as if the land belonged to the owner, discharged of the use to which it had been devoted, Sir Thomas Wilde C. J. observing that "by the appropriation of property to ecclesiastical or spiritual purposes, the owner voluntarily sacrifices the pecuniary value of the property so appropriated but he makes that sacrifice to obtain an object which he estimates of greater value than pecuniary value ; but when that object is entirely withdrawn from him, by the application of the property against his will to secular uses and those uses connected with pecuniary profit it does not seem consistent with justice to estimate the value to the owner upon the footing of its irrevocable appropriation to those spiritual purposes from which it has already been withdrawn." In the second case, *Stebbing* v. *Metropolitan Board Works* (1870) L.R. 6 Q.B. 37, it was held that when land subject to restriction as to its use is taken under compulsory powers, the amount of compensation payable to the person interested therein is to be assessed with reference to the value of his interest therein and not with reference to its value to the person taking it ; in other words, that when lands used as a burial ground is acquired, it has to be valued not as secularised by the acquisition but as consecrated and devoted to the purposes of a burial ground. This view is based on the same principle as underlies the decision of the judicial committee which is founded upon a con-

struction of the provisions of the Land Acquisition Act. In the third case, *In re Hily and South London Railway Co.* (1902) 18 T.L.R. 612: (1903) 19 T.L.R. 363 (in appeal) the court of Appeal went back to the view taken by Wilde C. J. in *Hilcoat* v. *Archbishop of Canterbury and York* and expressed their preference for it over the principle of *Stebbing* v. *Metropolitan Board of Works.* The three cases just referred to, therefore, are authorities on the question of the principle of valuation subject to restriction as to use, *Chairman of the Howrah Munipality* v. *Khetra Krishna Mitra,* 4 C.L.J. 343.

II. Sales to Prove Market Value:—The best evidence to prove what a willing purchaser would pay for the land under acquisition would be the evidence of *genuine* sales effected about the time of the notification for acquisition either in respect of the land or any portion thereof or the sale of lands precisely parallel in all its circumstances to the sale of land under compulsory acquisition; *Secretary of State* v. *Sarala Devi Choudhurani,* 5 Lahore 227: 79 I.C. 74: (1924) A.I.R. (L) 548; *Collector of Nagpur* v. *Atmaram* (1925) A.I.R. (N) 292. The market-value of the acquired land is also ascertained from recent sales in the same or in the adjoining localities and from the average rental of these and similar in the vicinity, *Fink* v. *Secretary of State,* 34 C. 599. In order to ascertain the market-value of property at a certain time it is an *indicium* and a valuable *indicium* as to the value of the property to ascertain what prices have been recently obtained for lands more or less similarly situated in the same neighbourhood. But the circumstances in each case under which the purchases are made must be borne in mind. If the plot be a small plot a higher price is probably obtained than if it were a large one. The precise situation of the land in each case is often a matter of very considerable importance as either enhancing or lowering the price. Again a particular person owning an adjoining property or who has some particular object in desiring to acquire some special piece of land would be inclined to pay a higher price. A smaller price would be given for an undivided share with its possible burden of litigation to obtain a partition than for an entire property. *Amrita Lall Bysack* v. *Secretary of State,* 32 I.C. 78. In estimating the market value of the land the best evidence will be the evidence of genuine sales which took place about the time of notification for acquisition either in respect of the same land or any portion thereof or the sales of lands exactly similar in all its circumstances to the sale of land under compulsory acquisition. *Khusiram* v. *Assistant Collector of Shikarpur* 1925, A.I.R. (Sind) 112: 17 S.L.R. 228. Evidence relating to the sale of a piece of land in the neighbourhood in which there was a pucca building is not inadmissible in a case when land without building was being acquired. It may be difficult to

determine the value of the land apart from the building, but it is not necessarily so, and the claimant is entitled to put this evidence before the Court and ask the Tribunal in a consideration of the evidence to decide what portion of the purchase price represents the value of the whole land then sold: *Modon Mohon Burman* v. *Secretary of State*, 1925 A.I.R. (C) 481 : 78 I.C. 557.

In the method of arriving at a valuation of land by reference to prices realised by sales of neighbouring lands it is plain that no evidence of former sales can be obtained which shall be precisely parallel in all its circumstances to the sale of the particular land in question. Differences, small or great, exist in various conditions and what precise allowance should be made for these differences is not a matter which can be reduced to any hard and fast rule, *The Trustees for the Improvement of Bombay* v. *Karsandas,* 33 B. 28. At the same time the instances produced must relate to lands, which on the whole have the same conditions of quality and situation as the acquired land. *Raghunath Das* v. *Collector of Dacca,* 11 C.L.J. 612.

In cases where the valuation of land cannot be based upon what the property was producing at the time of the notice of acquisition and when there have been no recent sales of the land to guide the Court, the market-value must be determined by sales of similar lands in the neighbourhood. The owner in claiming compensation can seek to prove either what the property would fetch if sold in one block or what is the present value if he plotted out the property and sold in lots. When no evidence is adduced of sales in the neighbourhood of such large blocks as under reference, the evidence before the Court of sales of small pieces of land in the neighbourhood enables the court to give an opinion regarding the value of different portions of the block and the value of the whole must be deduced from this. Sales after the notification must be discarded when it is proved that the values have been affected one way or the other by circumstances which have arisen after that date. *In Re* L. A. Act, *cause in the matter of Government of Bombay* v. *Karim Tar Mohommed,* 33 B. 325: 10 Bom. L.R. 660: 3 I.C. 660. In case of compulsory acquisition of land, the price should be assessed with reference to the probable use which would give the owner the best return. In fixing the price on this principle, it is necessary to be guided, as far as possible and reasonable by the rule enunciated by Lord Trurs in *East and West India Docks Company* v. *Gattke,* 3 M. & J. 165: 6 Rail Cas. 371 : 20 L.J. Ch. 217 : 15 Jur. 261, *viz.* that the Act should be expounded liberally in favour of the public and strictly against the Government or Company taking the land. Rates at which the nearest land with similar advantages have been sold within a short period and a few months after the notification of acquisition is issued, should be taken into consideration. An

average struck from sales within a period of five years before the acquisition of land situate at different parts of the village with greatly varying advantages and defects can be no satisfactory criterion of the value of the land to be acquired specially when the price has risen since the last years or so. *Ramsaran Das* v. *Collector of Lahore,* 9 P.W.R. 1911 : 9 I.C. 28. If a few of the frontage plots are sold for building purposes, that is no evidence that the remainder of the land can be sold for building purpose. The real test by which the market-value can be arrived at is to gather from other *sales* what the whole land would have been likely to realise in the market about the time of acquisition. *Collector* v. *Ramchandra Harischandra,* (1926) A.I.R. (B) 44.

Onus :—The onus of proving the value of land acquired lies upon the claimant and to establish the value and selling prices of neighbouring lands, it is necessary for him to adduce numerous or at least sufficiently numerous instances of sales of land in similar condition and used for similar purposes in the neighbourhood. In the absence of such evidence the Court must fall back on the rental value, which is the standard generally taken for sales of house property. *Biswa Ranjan* v. *Secretary of State,* 11 I.C. 62 ; *Arunchala Aiyar* v. *Collector of Tanjore,* 96 I.C. 279 : (1926) A.I.R. (M) 961. In a land acquisition case the amount of compensation cannot be enhanced upon the basis of conveyances of lands which have no similarity to the lands acquired. *Hem Chandra* v. *Secretary of State,* 31 C.L.J. 204 : 56 I.C. 758 ; *Secretary of State* v. *Monmotho Nath Dey,* 2 Pat. L.R. 268 : 84 I.C. 371 : (1925) A.I.R. (Pat.) 129. In determining the market-value of the land acquired by ascertaining the price at which the lands in the vicinity have been sold and purchased and making all due allowances for situation and the circumstances attending each particular sale, *the exceptional instances should always be excluded* from the compensation. The only instances to be taken into consideration are those that are as similar as possible to the one under consideration, similar not only in point of site but also as regards all other intended circumstances, *Amrita Lal Bysack* v. *Secretary of State,* 22 I.C. 78. A sale by a Hindu widow of neighbouring land cannot be treated as a fair basis for calculating the market value of land acquired under the provisions of the L. A. Act in as much as it is well known that full value is never fetched at such transactions nor should an isolated transaction at which the price fetched might have been purely artificial be made the basis of such calculation. *Natyanando Das* v. *Secretary of State,* 57 I.C. 734.

Awards :—In the category of sales fall the awards by Courts in previous cases of land acquisition. In *Secretary of*

State V. I. G. S. N. and Railway Co., 36, C. 967: 14 C.W.N. 134: 10 C.L.J. 281: 19 M.L.J. 645: 11 Bom. L.R. 1197: 36 I.A. 200, the High Court did not agree with the scheme of valuation made by the special Judge, and had increased his award relying upon prices paid for a piece of land in the vicinity in previous land acquisition proceedings as affording a guide to the amount of compensation to be awarded. And in appeal the Judicial Committee held that there is no ground for interfering with the award of the High Court. *Madan Mohan Burman* v. *Secretary of State*, 1925 A.I.R. (C) 481.

Unregistered Sales :—When in an application for varying the award of the Collector the plaintiff cited certain alleged sales in the vicinity which though for sums over Rs. 100/- were not registered and which were in favour of petitioner's son-in-law, held, that such sales could not be considered. *Mashawe* v. *Collector of Myamung*, 9 Bur. L.T. 204: 11 I.C. 918.

Where no Evidence of Sales :—When no evidence has been adduced of sales in the neighbourhood of large blocks under reference the evidence before the Court of sales of small pieces of land in the neighbourhood enables the Court to give an opinion regarding the value of the different portions of the block and the value of the whole block must be deduced from these. *Government of Bombay* v. *Karim Tar Mohomed*, 33 Bom. 325. In assessing compensation for lands acquired under the L. A. Act where the letting value of the land is not ascertainable and the selling value of the land does not afford a reliable guide, the best course is to ascertain what is the annual value of the produce of the land in question and to proceed on that basis. *Ram Sahay Shah* v. *Secretary of State*, 8. C.W.N. 671.

Claimant Buying Cheap :—The mere fact that the owner of the property acquired under the L. A. Act had obtained it cheap would not entitle the Government to get under the fair market-value, but the price which was paid by the owner shortly before the publication of notification would be a valueable piece of evidence to help the Court in ascertaining the true market-value of the property. *Qumar Ali* v. *Collector of Bariely*, 23 I.C. 512. When the property under acquisition has been recently purchased, the price paid is *prima facie* the market value thereof. The claimant may claim more than the price paid and it is open to him to contend that he bought the property at less than its market value or that there has been a general rise in the value or the property between the date of purchase and the date of declaration. On the other hand it is open to the Government to show that the price paid

by the claimant was so high that no prudent purchaser would have paid it, and also that there has been a general fall in the value of the property in the neighbourhood between the date of agreement and the date of declaration. *Government of Bombay* v. *Ismail Ahmed Hafiz Moora*, 26 Bom. L.R. 277: 85 I.C. 531: (1924) A.I.R. (B) 362. In acquiring lands under the L. A. Act (I of 1894) the question for enquiry is not what was the original price paid for the land or the money spent in its present disposition, or the actual income received but what was the market or sale value of the land if laid out in the most beneficial manner. *Bhoja Balappha* v. *Collector of Dharwar*, 1 Bom. L.R. 454.

Offers :—The evidence of offers made by irresponsible brokers on behalf of undisclosed principal or perhaps for their own purposes without any principal behind them, however, are useless. *Secretary of State* v. *Sarala Davi Choudhurani*, 4 L. 227: 79 I.C. 74: (1924) A.I.R. (L) 548. No doubt that evidence of offers is admissible but an offer amounts merely to an opinion on the part of the person making it and when offers were oral ones unsupported by any documentary evidence they do not carry any weight or afford any assistance. *Abdul Rahim* v. *Secretary of State*, 97 I.C. 775: (1926) A.I.R. (L) 618.

Valuation by Belts :—The principle of valuation by dividing the land acquired into front land and back land, though not generally viewed with favour, has long been followed. In *Prem Chand Boral* v. *The Collector of Calcutta*, 2 C. 103, Garth C. J. observed that "the frontage is no doubt valuable— if instead of calculating the whole area together we were to estimate the front land at Rs. 1,000/- and the back land at Rs. 600/- the result will be the same." The case has been distinguished in *The Collector of Poona* v. *Kashinath*, 10 B. 585 in the followinng terms. "We are however, unable to agree with the District Judge in regarding any portion of the site in question as "frontage" having a special value and as regards the land dealt with in the Calcutta decision, *where the plots had considerable length of frontage on public thoroughfares or streets*. Here, on the contrary, the land is surrounded on all sides with buildings which shut it out from the main arteries of the town. Nor would the proportion of one to three for frontage and back sites adopted in the Calcutta case be applicable to land so situated. *Certain sites would doubtless fetch a higher value than others if the land were laid out for building purposes; but the distinction between frontage and back sites has, we think, scarcely any practical importance in assessing its value.*" When determining the value of frontage land the depth is a question of supreme importance. What is a suitable depth must primarily depend on the character of

the buildings in the locality but in an ordinary shop and chawl locality it has been the custom for surveyors to calculate the depth at 100 feet. In the next place the value of a building frontage must depend on the higher rents that can be obtained for shops or rooms facing the street, and as the proportion of these rents to the lower rents of the back rooms decreases, so does the value of the whole frontage land decrease.........But there is no hard and fast rule that the back land must be worth half the frontage land. That would only lead to absurdities. *Government of Bombay* v. *Karim Tar Mohomed,* 33B. 325. In *Secretary of State* v. *I. G. S. N. & Rail Co.,* 36 C. 967 14 C.W.N. 134 10 C.L.J. 281 the Government acquired land on the banks of the Hughly. The owners objected to the Collector's award. The special judge on reference determined the amount of compensation by basing his calculation on a system of dividing the land into belts. On appeal the High Court rejected the Special Judge's method of valuation and upon careful consideration of previous awards and prices realised on sales of land in the neighbourhood and other matters, increased the amount, *Held on appeal* by the Government to His Majesty in Council that the argument based on the great experience of the special Judge in such case amounted to a denial of the right of the High Court to review his findings. The judgment of the High Court which gave due weight to the evidence in the case was affirmed. The question again arose for consideration in *Raghu Nath Das* v. *Collector of Dacca,* 11 C.L.J. 612 where Mookerji J, in discussing the question observed "The question next arises as to the value of the other blocks which stand on an entirely different footing. The learned Vakil for the claimants has contended that the lands acquired should be divided into belts, and that the value of the second belt should be taken as half that of the first belt. But it was pointed out by this Court in the case of *Secretary of State* v. *I. G. S. N. Co.,* 36 C. 967 that the mode of valuation by division into belts is artificial and does not always afford a reliable guide to the ascertainment of the market-value and this view was subsequently affirmed by the Judicial Committee. It may further be observed that if the mode of valuation by division into belts be adopted a great deal would depend upon the depth of the belts assumed more or less arbitrarily. We must therefore, determine the value of the first block as that of back land in relation to the third block. No hard and fast rule can be laid down as to the proportion between the value of front land and back land and it was pointed out in *Government of Bombay* v. *Karim Tar Mohommed,* 33B 325 that it can be taken as an inflexible rule, that back land is worth half the front land. In fact, the case of *Alaul Huq* v. *Secy. of State,* 11 C.L.J. 393, where the front land was valued at an exceptionally high rate as land well-fitted for the erection of

shops, the back portion was valued at one-fifth of that rate because it could only be used for an entirely different and less profitable purpose." It has been observed by Maclean C. J. in *Goorodas Kundu* v. *Secy. of State,* 18 C.L.J. 244 : 22 I.C. 354 that "It is diffiuclt to lay down in these cases any hard and fast rule as to what is the relative proportion of value as between the back land and the frontage land, but it is at least reasonable in seeking to fix that proportion to bear in mind how far the land stands back from the road." In case of acquisition of land where a large area has to be valued it is impossible to fix the value of various portions of it of different rates on any thing like approaching on accurate basis. The only way in which the market value can be arrived at is to judge from other sales what the whole land would have been likely to realise in the market. It is not possible to divide the whole into separate pieces and give one value to so much of front land and divide again the interior land into separate portions and value them again at different rates. *The Collector* v. *Ramchandra Harischandra,* (1926) A.I.R. (B) 44. Frontage land derives its value from the advantage of much higher rents being received from shop-keepers from the ground floor of buildings raised thereon. In all cases where there is a large area of undeveloped land under acquisition, it is the market-value of the undeveloped land which has to be considered and it must not be forgotten that a purchaser of such land will ordinarily expect to make a large profit on the original outlay, because in addition he will have further expenditure to make and there will be the risk that it will be sometime before he can dispose of the land. *Bombay Improvement Trust* v. *Ervanji Maneckji Mistry,* 96 I.C. 425.

III. Expert Opinion :—Land is not like ordinary goods the value of which can be fixed on inspection by a person who has knowledge of them. Its value is the result of various factors working in different ways and degrees, and they can not be apprehended and estimated aright off-hand. The advantage of experience in the valuation of land lies in this, that the expert knows what factors should be considered, what information he should seek for, where he should seek it and how he should test it and apply it. But experience does not enable one to dispense with enquiry ; and an honest and useful valuation cannot be made simply by visiting the land and picking up orally some casual and untested information or gossip which may be interested or one-sided. These conditions apply specially to land and in or near large towns. *Rajendra Nath Banerjee* v. *Secretary of State,* 32 C. 343. In addition to the evidence of sales the Court can be guided by the opinion of surveyors. It is necessary however to distinguish opinion from

argument. And the practice which has grown up in References under the Land Acquisition Act of surveyors making long reports and providing copies to the other side before hearing, appears open to grave objection. A surveyor's opinion by itself is good evidence. What value the Court will put on it depends entirely on the effect of cross-examination, but there is no reason why the witness should himself provide the material for his cross-examination. It will save the time of the court if a surveyor prepares a concise description of the property to be valued, but if he is a wise man he will add nothing more except his opinion of its value. If, however, he does give his reason they must be based on facts and not on hypothesis. *In the Matter of Government of Bombay and Karim Tar Mohommed*, 33 B. 325: 10 Bom. L.R. 660: 3 I.C. 660. Much reliance can not be placed on the evidence of experts unless it is supported by or coincides with other evidence. *Harish Chandra Neogy* v. *Secy. of State*, 11 C.W.N. 875. In assessing the value of land for purpose of land acquisition the opinion of experts is admissible in evidence but the value to be attached to such evidence depends upon the quality of evidence. *Secretary of State* v. *Sarala Devi Choudhurani*, 5 L. 227: 79 I.C. 74: (1926) A.I.R. (L) 548.

Conclusion :—From a consideration of the matters to be taken into consideration in determining the market-value of land as stated in the preceding pages, we come to the conclusion that elements for consideration in determining the market-value of the land are the following; namely:—Profits from the most advantageous disposition of land is one test for determining its market-price. The probable use of land in the most advantageous way in accordance with the use already made of neighbouring lands leads to speculative advance in prices to which regard should be paid. The utility of land is an element for consideration in estimating its value, that is, the utility which might be calculated by a prudent business man. The market-value of the acquired land is also to be ascertained from recent instances of sales in the same or in the adjoining localities, from the average rental of these and similar lands in the vicinity. General demands for land and the consequent reflex action on the prices of all classes of lands is a factor in the calculation of the market-value of land under acquisition. *Fink* v. *Secretary of State*, 34 Cal. 599; *Rajendra* v. *Secretary of State*, 32 Cal. 343. In addition to the evidence of sales the Court can be guided by opinions of Surveyors. *Government of Bombay* v. *Karim Tar Mahomed*, 33 Bom. 325. The methods of valuation of land acquired under Act I of 1894 may be classified under three heads:

(1) The opinion of the valuators or experts,

(2) The price paid within a reasonable time in *bona-fide* transactions of the purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages and

(3) a number of years' purchase of the actual or immediately prospective profit from the lands acquired.

Combination of Methods :—It is generally necessary to take two or all of these methods of valuation in order to arrive at a fairly correct valuation. Exact valuation is practically impossible. The approximate market-value is all that can be aimed at. *Harish Chandra Neogy* v. *Secretary of State,* 11 C. W.N. 875. To the same effect is the decision in *Amrito Lall Bysack* v. *Secretary of State,* 22 I.C. 78 where Banerjee J., held that "There are three recognised modes of determining the market-value : *first,* by ascertaining the price or prices, at which the whole or any part or parts of the land acquired has or have been sold and purchased in recent years ; *second,* by ascertaining the net annual income of the property and by taking a certain number of years' purchase of that income depending upon the nature of that property ; and *third,* by ascertaining the price at which the lands in the vicinity have been sold and purchased, and making all due allowance for the situation and the circumstances attending each particular sale. Where the method of hypothetical development is employed for assessing compensation with the method of ascertaining the present value of the land by reference to the prices realised by the sale of neighbouring lands and the consequence is that the two methods lead to very much the same result, it follows not only that result is entitled to so much the greater degree of confidence but also that the method of hypothetical development is itself corroborated. *The Trustees for the Improvement of Bombay* v. *Karsandas,* 33 B. 28.

Damages :—Under section 23 the Court in determining compensation has to consider besides market-value what damage, if any, has been suffered by the person whose land has been acquired. The damages have been enumerated in Sec. 23. (1) sub-clauses (2), (3), (4), (5), and (6).

Sub-clause (2) refers to the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof.

Trees are things attached to the earth and are thus included in the definition of land in Sec. 3 (a) of the Act and this definition must be applied in the construction of Sec. 23 of the Act. The value of such trees as are on the land when the notification under Sec. (4) (1) is made is included in the market-value of the land on which an allowance of 15 per cent is to be

calculated under Sec. 23 (2) of the L. A. Act. *Sub-Collector, Godavari* v. *Seragam Subaroyadu*, 30 Mad. 151.

Fruit-bearing trees likely to bear fruits for a number of years, for example, mangoe trees should also be valued at 20 years' annual rental, *Rajammal* v. *Head Quarters, Deputy Collector, Vellore*, 25 I.C. 393. Rs. 3 was taken as the annual income of a cocoanut tree and ten years' purchase was allowed as the value for the cocoanut trees. *Shanmugha Velayuda Mudaliar* v. *The Collector of Tanjore*, 23 M.L.W. 336: (1926) M.W.N. 235: (1926) A.I.R. (M) 945.

Orchard :—The orchard lands are not to be valued as ordinary occupancy in the neighbouring plots and added thereto the value of trees of which the orchards were composed. The value of an orchard depends largely upon the suitability of the land for orchard purposes, upon the care taken of it and upon its situation with regard to the market. It is not a question merely of the value of the trees and the earth in which the trees grow. The two cannot be valued separately. They must be valued together. *E. M. Cohen* v. *Secretary of State*, 43 I.C. 17.

Agricultural Lands Valued as Building Sites :—Where a person whose land was acquired under the L. A. Act asks the same to be valued as vacant land to be used for the purpose of erecting buildings, he could not at the same time claim the value of trees on it, on the footing that they would still remain there—the claims being inconsistent. The proper value of trees would be their value as timber after they have been cut down. *The Secretary of State* v. *Duma Lall Shaw*, 13 C.W.N. 487; *Shanmuga Velayuda Mudaliar* v. *Collector of Tanjore*, 23 M.L.W. 336: (1926) M.W.N. 235: (1926) A.I.R. (M) 945. Where agricultural lands are valued as building sites, the claimants are not entitled to ask that the trees standing on the land should be separately assessed and valued as fruit-bearing trees since what is awarded is an inclusion price, *Tharosaruma* v. *Deputy Collector, Cochin*, 45 M.L.J. 339: 18 L.W. 356: (1923) M.W.N. 682: 33 M.L.T. 48: 77 I.C. 347.

Sub-clause (3). Principle of Re-instatement :—Besides the market-value of the land and the standing crops and the trees standing thereon the legislature directs that in assessing compensation for taking lands compulsorily the Court has also to consider whether the claimant whose land has been acquired has suffered any damage by reason of *severing* such land from the rest of the land. The value to the owner can be ascertained either by a valuation of the lands taken with the addition of compensation for the incidental injury or by what is known as the *Re-instatement Principle*. In either case, the test of compensation is value to the owner. The difference arises in the

method to be adopted in ascertaining the value. In a majority of cases the value to the owner may be fixed by the value of the property taken with the addition of compensation for incidental injury but in some cases the value so ascertained would not be the value to the owner, and then the principle of re-instatement should be applied. This principle is *that "the owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises or land taken, by premises or lands which would be to him of the same value"* Cripps on the Law of Compensation. 5th Ed. p. 118.

Under the provisions of the L. A. Act part of an owners' tea garden land was taken and by the construction of a railway line several acres of land to the south of the line were cut off from the northern portion of the garden where the residence of the manager and all buildings and offices connected with the management and the cooly lines were situated. The line ran through deep cuttings for a considerable portion of its length of about a mile and a half, some of which were incapable of being crossed by coolies employed on either side of the line of railway ; held, that in computing the amount of compensation to be awarded, in addition to the market-value of the land and the amount allowed for standing charges, and the statutory allowance of 15 per cent., the increased cost of working the garden in consequence of the *severance* of the one portion from the other, should also be taken into consideration ; *Baraoora Tea Co.* v. *Secretary of State,* 28 C. 685. The word *acquisition* in Section 23 of the L. A. Act, includes the *purpose for which the land is taken* as well as the actual taking. A person whose land is acquired under the L. A. Act is entitled to compensation for loss of access to the remaining portion of his land resulting from the *purpose* for which the land is acquired. *M. E. Moolla* v. *Collector of Rangoon,* 98 I.C. 461.

What is Injurious Affection :—The first of the reported English decisions which deals with the question of injuriously affecting lands by the construction of public works, where the mischief of which complaint is made is caused by what is done on lands taken from the same owner, is *In re Stockport, Timperley and Altringham Ry. Co.* (1864) 33 L.J. (Q.B.) 251. That decision has been considered in a number of subsequent cases. For a time it gave rise to considerable difference of judicial opinion, but the law as applied by Crompton J. has been twice considered, and approved in the House of Lords ; *Duke of Buccleuch* v. *Metropolitan Board of Works,* L. R. 5 H. L. 418 ; and *Cowper Essex* v. *Acton Local Board,* 14 A.C. 153. In the *Stockport Case, supra,* a company had taken land,

the property of L., and proposed to make their railway so close to a cotton mill belonging to him, that, by reason of the proximity of the railway, and the danger of fire from trains using the line, the building could only be insured at an increased premium, and was rendered of less saleable value. Crompton J. stated the principle as follows: "Where the damage is occasioned by what is done upon *other* land which the company have purchased, and such damage would not have been actionable as against the original proprietor, as in the case of sinking of a well and causing the abstraction of water by percolation, the Company have a right to say, "We had done what we had a right to do as proprietors, and do not require the protection of any Act of Parliament; we, therefore, have not injured you by virtue of the provisions of the Act." *Where, however, the mischief is caused by what is done on the land taken,* the party seeking compensation has a right to say, "It is by the Act of Parliament, and the Act of Parliament only, that you have done the acts which have caused the damage; without the Act of Parliament everything you have done, and are about to do, in the making and using the railway, would have been illegal and actionable, and is, therefore, matter for compensation according to the rule in question." The principle stated by Crompton J. in the *Stockport Case* was considered in *Duke of Buccleuch* v. *Metropolitan Board of Works,* L.R. 5 H.L. 418, and a distinction was drawn between that case and the cases of the *Hammersmith Ry. Co.* v. *Brand,* L.R. 4 H.L. 171 and *City of Glasgow Union Ry. Co.* v. *Hunter,* (1870) L.R. 2 H.L. 78. Lord Chelmsford, referring to these cases, said: "In neither of these cases was any land taken by the railway company connected with the lands which were alleged to have been so injured, and the claim for compensation was for damage caused by the use and not by the construction of the railway. But if, in each of the cases, lands of the parties had been taken for the railway, I do not see why a claim for compensation in respect of injury to adjoining premises might not have been successfully made on account of their probable depreciation by reason of vibration, or smoke, or noise, occasioned by passing trains." Lord Watson in delivering the judgment in *Cooper Essex* v. *Acton Local Board,* 14 A.C. 153, said: "It appears to me to be the result of these authorities, which are binding upon the House, that a proprietor is entitled to compensation for depreciation of the value of his other lands, in so far as such depreciation is due to the anticipated legal use of works to be constructed upon the land which has been taken from him under compulsory powers." Again His Lordship said: "I am prepared to hold that, *where several pieces of land, owned by the same person, are so near*

to each other, and so situated, that the possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of the Act, so that if one piece is compulsorily taken, and, converted to uses which depreciate the value of the rest ; the owner has a right to compensation." *Sisters of Charity of Rockingham* v. *The King,* (1922) 2 A.C. 315.

Measure of Damage :—A piece of land over which there was a Municipal drain was acquired by the Government after paying compensation. The Municipality claimed a larger sum on the ground of expenditure in constructng a diversion drain : Held that under clauses 3 and 4 of Sec. 23 of the L. A. Act the assessment of the value of the land regardless of the user for which it is specially fitted, cannot lead to an adequate award of the compensation for the loss sustained by the owner. The special adaptibility of the land acquired cannot altogether be ignored in the determination of its market-value. That the compensation awarded was also inadequate in view of the principle of re-instatement which is that an owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises or lands taken by premises or lands which would be to him of the same value. That in a case like the present where land is used for a special purpose in conjunction with other lands of the owner which are injuriously affected by its acquisition and where it is established that the owner, will be compelled by law to or, can provide himself with other land capable of being adapted in such a way as to restore to his land injuriously affected its former usefulness, one measure of the damages sustained by the acquisition injuriously affecting the other property is the difference between the sum awarded for the land acquired and the cost to the owners of providing himself with other land to be used in a manner similar to that in which the land acquired was used, plus the cost of adapting it to such use. *Baroda Prasad Dey, Chairman, Serampur Municipality* v. *Secretary of State,* 49 C. 83 : 25 C.W.N. 677.

Damage Sustained at the Time of the Collector's taking Possession :—The words "sustained at the time of the Collector's taking possession" include not only damage which has been actually caused at the time but also that which can be reasonably anticipated and estimated then. In *Indo Burma Petroleum Company* v. *The Collector of Yenangyaung* 4 Bur. L.T. 250 : 12 I.C. 202, the land sought to be acquired adjoined the owner's oil-well sites and also oil-well sites belonging to other companies. The lower Court refused to allow compensation for damage caused by the severance of this land from the appellant's other lands on the ground that the damage was not

sustained at the time the Collector took possession in as much as the appellants had not then made use of the land for storage purposes; *Held* that the addition of the price of land to the owner's well-site materially increased the value of the latter, that the joint value of the lands and the well-sites as one property was greater than the sum of the values of the lands and the well-sites taken separately and that the severence of the land injuriously affected the value of the well-sites and brought it down, at any rate, to the value they had before the owner acquired the land and that this depreciation in value took place at the time the Collector took possession in spite of the fact that the land had not upto then been used for storage purposes. The proper criterion for deciding the market price of the land in this case is the price which the other oil-well owners in the vicinity would be willing to pay for the lands.

Sub-clause (4). When is a person entitled to claim compensation for Injurious Affection :—In order to entitle a person to recover compensation for injurious affection the damage must arise from something which, would, if done without statutory authority, have given rise to a cause of action. In other words in order to have a right to compensation against promoters of an undertaking in respect of any act done under their statutory powers, the person claiming must have had a good cause of action in respect of that act if it had been done by any person not so authorised. The promoters of an undertaking, having acquired land may therefore use it in any way in which an adjoining owner might have lawfully used it without confirming any right to compensation. Thus, they may erect an embankment on the land acquired and destroy the amenity of adjoining property (*Re Penny and South Eastern Rail Co.* (1857) 7 E. and B. 660). They may block up access of light and air so long as no easement is interfered with (*Butt* v. *Imperial Gas Co.* (1866) 2 Ch. App. 158; *Eagle* v. *Charring Cross Rail Co.* (1867) L.R. 2 C.P. 638); they may remove the support of buildings where the right of support has not been acquired. (*Metropolitan Board of Works* v. *Metropolitan Rail Co.*, (1868) L.R. 3 C.P. 612); they may sink springs and draw off the underground water, (*New River Co.* v. *Johnson,* (1860) 29 L.J. (M.C.) 93; they may pull down houses and so injure the business of neighbouring shops, (*R.* v. *Vaughan,* (1868) L.R. 4 Q.B. 190; *R. V. London Dock and Co.,* (1895) A.C. 587). A company acting under the statutory powers is treated as a private individual acting within his own rights. If it does an act which it is authorised by law to do, and does it in a proper way, though the act works a special injury to a particular individual such individual cannot maintain an action, and is without remedy unless one is provided by Statute,

(*East Freemantle Corporation* v. *Annois*, (1902) A.C. 213 (P.C.). If, however, such a company does an authorised act in a negligent or unreasonable manner, it will be liable to an action for damages, and, in a proper case, for an injunction, and the fact that a right to compensation is given by statute does not exclude the restraining jurisdiction of the Court. (*Roberts* v. *Charing Cross, Euston and Hampstead Rail Co.*, (1903) 87 L.T. 732.)

For the same reason damages which would be too remote to be recovered in an action cannot be recovered as compensation: *Halsbury's Laws of England,* Vol. VI p. 45.

Damages for Injurious Affection:—This clause provides that the court in determining the amount of compensation to be awarded, shall take into consideration damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition *injuriously* affecting his other property moveable or improveable or his earnings. Though the language of this clause is slightly different from that of the corresponding provision of the English statute, 8 and 9 Vic. 18, sections 49 and 63, that does not make the principle laid down in the case of *Cowper Essex* v. *The Acton Land Board,* (1889) L.R. 14 App. Cas. 153 wholly inapplicable to India. It is true that the claimants are entitled to compensation only for the damage sustained at the time of the Collector's taking possession of the land and as the time of the Collector's taking possession of the land must under the provisions of section 16 be preceded by his award which again must be preceded by a declaration of the intended acquisition under section 6 stating the purpose for which the land is acquired, and as the announcement of a purpose like the one (sewage discharge depot) for which the land in question was acquired must injuriously affect the value of such land the claimants clearly bring their case within cl. 1 (4) of section 23, for upon such announcement being made the market-value of the land must have been reduced, and if the owners wanted to sell the land at the time, the land would have been sure to fetch less than its former value. The contention, on the other hand, that as it was not shown that any of the tenants left the land upon the announcement or declaration being published or that the rent which the proprietors were realising had been reduced and therefore no damage has been sustained by the claimants at the time of the Collector's taking possession of the land is unsound, because the law does not make the rent realised from the land the sole basis for determining the market-value. *Prem Chand Boral* v. *Secretary of State*, 2 Cal. 103. *Guru Das* v. *Secretary of State*, 18 C.L.J. 244. Where land is

acquired for public purposes, the owner thereof is entitled to be compensated for any injury done to his other lands even though the loss is more than counter-balanced by the advantages he gains by the execution of the project. In such cases the owner is entitled to damage for diminished facilities of communication and access to his other lands. *Nathor Hussain* v. *Deputy Collector Usilampati,* 31 I.C. 259; *M. E. Molia* v. *Collector of Rangoon,* 98 I.C. 461. A person is entitled to compensation under sub-section 4 of section 23, of the L. A. Act in respect of a Railway Company having made the "level-crossing" across his private road giving access to his house, if he can shew that he sustained damage or loss for it by reason of his other property having been injuriously affected. *Madhu Sudan Das* v. *Collector of Cuttuck,* 6 C.W.N. 406. The test is that where by the construction of works there is a physical interference with any right, public or private which the owners or occupiers of property are by law entitled to make use of in connection with such property, apart from the uses to which any particular owner or occupier might put it there is a title to compensation if by reason of such interference, the property as a property, is lessened in value. *The Metropolitan Board of Works* v. *McCarthy,* (1874) 2 H.L.E. and I App. 243.

Damage for Loss of Earnings :—There is a difference between the claim of a person whose land had not been acquired for compensation for injury caused to his property or interests by the acquisition, and the claim of a person part of whose land had been acquired for compensation for injury caused by the acquisition to the remainder of his land, and this was pointed out by Lord Halsbury in *Cowper Essex* v. *Acton Local Board,* (1889) L.R. 14 App. Cas. 153. In *Collector of Dinajpore* v. *Girija Nath Roy,* 25 Cal. 346 a piece of land was acquired for the construction of a bridge; a bridge was constructed upon it and opened for traffic, and the claimant whose land was acquired for the construction of a bridge claimed compensation for the loss of the income derived from his ferry which was worked within a very short distance of the spot on which the bridge has been constructed and within the limits of his estate. The ferry which was his property had undoubtedly been injuriously affected; he had suffered loss in consequence and the only question was whether his claim came within cl. (4) of section 23 of the L. A. Act. In delivering the judgment the court observed that "the damage which must be taken into consideration under Cl. (4) of Section 23 is the damage sustained at the time of the collector taking possession of the land by reason of the acquisition injuriously affecting the other property in any other manner or

the earnings of the person interested. There is no limit as to the nature of the "injurious affecting" except in so far as this is provided for by the other clauses of the section, the difficulty is as to the time when the damage is sustained. The words "at the time when the collector takes possession of the land" cannot mean that compensation can only be given for damage which had actually at the time been sustained without reference to a continuing damage caused by the acquisition. The damage must be by reason of the acquisition ; but this is only complete when possession is taken, for till then, the Government could withdraw from it under section 48. The words must be taken to mean the time when the damage takes place, and the right to compensation arises and it is sufficient to bring a case within this provision if, when possession is taken, *there is other property or earnings injuriously affected so as to cause some damage to the person interested.* The word "acquisition" as used in Section 23 includes the purpose for which the land is taken as well as the actual taking. The intention of the Legislature to be gathered from the Act seems to have been that persons *a part of whose land* has been compulsory taken from them should, apart from its actual value, be compensated for injury done to their property by the taking." In *Maharajah Sir Ramesswar Singh* v. *Secretary of State,* 34 Cal. 470: 11 C.W.N. 356: 5 C.L.J. 660 the question was upon what principle the damages ought to be assessed and it was held by Mookerjee J., that "It appears to be quite clear that no damages can be claimed on account of losses sustained by reason of the construction of the Railway bridge: for instance if the Railway Company had not acquired the lands used as landing places for the ferry, but had merely constructed a bridge across the river, as a result of which the traffic over the ferry was diminished, no damage could be claimed, not at any rate, unless it was established that the ferry owner had an exclusive franchise, that is, an exclusive right to carry passengers and goods across the river. In other words the taking of property that merely injures a franchise, but does not interfere with the exercise of it, is not such a taking of property from the owner of the franchise as to require compensation. Reference may be made in this connection to the case of *Hopkins* v. *Great Northern Railway,* (1877) 2 Q.B.D. 224. In which it was held that the owner of a ferry cannot maintain an action for loss of traffic, caused by a new highway by bridge or ferry made to provide for a new traffic ; in that case, the owner of the ferry franchise unsuccessfully claimed compensation for loss of profits, caused by a rail-road built across the stream. The same view was taken in the cases of *Moses* v. *Sanford* (1883) 11 Lee (Tennesse) 731 and *Hyde's*

Ferry v. *Davidson County* (1891) 91 Tennesse 291 : 18 S. W. 626 ; in the former of these cases, it was held, that the profits of the ferry franchise had been affected, not by the acquisition of the land over which the bridge was built, but by the opening of the bridge for travel across the river. *The case, however, is different, where the land which is used as the landing place for the ferry, is acquired.* In such a case, the access to the river, and with it, the exercise of the franchise is destroyed, and consequently compensation is payable. In other words, where the ferry landing and the ferry franchise remain precisely as before, though the profits are liable to be depreciated by the new mode of travel, legitimately created, no compensation can be claimed, but where by reason of the acquisition itself, the exercise of the franchise or the use of the property apertaining to the franchise, is interfered with, damages can be rightly claimed. It follows, therefore, that, although the value of the property to the owner at the time it is taken is the measure of damages, the value of a ferry ought not to be determined by ascertaining the average of the profits at the date of the acquisition by regarding it as an invariable quantity and by taking a number of years' purchase. The damages ought to be calculated on the basis of the average profits from the ferry. No compensation is tendered by the Collector or ordered by the Act except to persons interested in the land. If the acquisition injuriously affects the earnings of the persons interested, he is to obtain further compensation beyond the market value of the land. But no compensation is given to persons *not interested* in the land on the ground that their earnings may be affected by the change of ownership, or indeed, on any ground. Quarrymen employed in a plot of land containing granite quarries are no more interested in the land than a ploughman or a digger is interested in the land on which he works for wages. Nor are their earnings the earnings of the Zemindar who is interested. The market value of the property is not increased by the circumstance that a number of persons work on it and so earn their livelihood. That is no profit to the owner ; it may be expense to him, *Secretary of State* v. *Shanmugarya*, 16 Mad. 369 (P.C.) : 20 I.A. 80.

How Damages for Injurious Affection are to be Recovered :—In cases where compensation is recoverable for injurious affection under a special Act, the person injured can only recover in respect of losses sustained in consequence of what the promoters have lawfully done under their statutory powers. If they exceed those powers, either by doing an act not authorised or by doing an authorised act in a negligent manner, the person injured will have a remedy by action and will not be entitled to compensation. If they while carrying out

this authorised work, fail to take sufficient care to prevent damage, they will be liable to an action in respect of such injury and also to pay compensation for the damage caused by their authorised acts, *Halsbury's Laws of England,* Vol. VI, p. 44.

Measure of Damages :—The compensation ought to be assessed upon one-half of the annual loss which may be assumed as the loss of income of the owner of the ferry due to the acquisition of the lands under Act I of 1894 and upon the analogy of the principle recognised in section 17 of the Bengal Ferries Act (1885) which provides that when a private ferry is taken possession of by the Government the owner thereof may be awarded compensation up to a limit of 15 times the average net profits of the previous five years with interests and statutory allowance. *Sir Rameswar Sing* v. *Secretary of State,* 12 C.L.J. 56 : 6 I.C. 343.

Loss of Trade Earnings :—When premises used by a dentist for his profession were acquired, that his earnings were injuriously affected hardly admits of question, as the change of his address would necessarily diminish the number of his patients until his new place of business became well-known. The damage has to be assessed prospectively at the time of acquisition of the property and as compensation for the *risk* of business deteriorating, the amount of which is estimated from the data available at the time. Like all damages, it is seldom a complete recoupment for loss actually sustained. *Paramanund* v. *Secretary of State,* 44 P.R. 1094.

The loss of earnings owing to the acquisition of a favourable locality is to be calculated on the basis of what would be the earnings, if the trade occupations were pursued at the particular locality and the judge should not take into consideration the earnings which may accrue from the new habitation. *Venkatachariar* v. *Divisional Officer, Tinnevelly,* (1912) 1 M.W.N. 460 : 14 I.C. 625. In *Recket* v. *Metropolitan Rail Co.,* (1865) 34 L.J.Q.B. 257 : 13 W.R. 455, the principle has been well illustrated by the dictum of Earle C. J. which runs as follows, "As to the argument, that compensation is in practice allowed for the profits of trade where the land is taken, the distinction is obvious. The Company claiming to take lands by compulsory powers, expel the owner from his property and are bound to compensate him for all the loss incurred by the expulsion and the principle of compensation then is the same as in trespass for expulsion, and so it has been determined in *Jubh* v. *Hull Dock Co.* (1846) 9 Q.B. 443 : 15 L.J.Q.B. 403.

Diminution in Value of Good-Will :—A further item to be taken into consideration is the probable diminution in the

value of the claimant's good-will in his trade consequent on the taking of the premises in which such trade is carried on. Good-will is the probability of the continuance of a business connection, and its value is fixed at a certain number of years' purchase according to the nature of the particular trade or business. When lands, however, are taken under compulsory powers, the good-will is not purchased by the promoters, but remains the property of the trader and the loss suffered by him is the diminution in its value in consequence of his compulsory ejectment from the premises he is occupying. So far from the good-will being purchased or destroyed by the promoters, there are many cases in which diminution of its value is hardly appreciable, although the trade-premises have compulsorily been taken. If a business is of a wholesale character or is one which consists of orders from a widely extended area, a compulsory change of trade premises would be productive of small loss. If, in addition, convenient premises can be acquired in the immediate neighbourhood of the premises taken, the loss incurred through diminution in the value of good-will becomes merely nominal, and the owner's only claim to compensation is in respect of any reasonable expenses which the taking of equally convenient new premises has rendered necessary. On the other hand, there are cases in which the diminution in the value of a good-will may practically equal the entire value of the good-will. This is the case when the business is retail and local, depending on neighbouring customers and no suitable premises can be found on the locality within which the business connection extends. *White* v. *Commissioners of Public Works*, (1870) 22 L.T. 591, Cripps p. 107-108.

Acquisition of Bazar :—When a bazar (market) is acquired under the L. A. Act the claim of the proprietor ought not merely to be treated upon the rental basis, but should be based upon the permanent rents received from the shops in the bazar, and also on the *loss of earnings* in respect of profits in respect of tolls received from people, who came to the bazar with baskets, such profits varying according to the number of baskets brought by the sellers to the bazar. When a bazar was liable to competition from a rival bazar which might be started in the neighbourhood, thus diminishing its income, and its profits were not dependent solely on permanent rents of the shops, but were also based upon the fluctuating element of tolls received from people who came to the bazar in varying numbers with baskets for the purpose of selling their articles, *held* that the valuation of the bazar at 18-2/11 years' purchase was fair and proper *C. E. Grey* v. *Secretary of State*, 39 I.C. 619.

Lands in Municipal Area :—The only basis upon which compensation can be assessed in respect of lands within a

Municipal area is the rental at so many years' purchase determined on the basis of Municipal assessment and according to the principles laid down in *Secretary of State* v. *Baij Nath Goenka*, 12 C.W.N. cc. one-sixth should be deducted from Municipal assessment on the whole area for road-cess and other costs, that taxes and ground-rents should also be deducted and the balance should be estimated at 20 years' purchase. *Tulshi Makhania* v. *Secretary of State*, 11 C.L.J. 408. Section 32 of Act V of 1876 the Bengal Municipal Act (corresponding to Section 30 of III of 1884) enacted that "all roads, bridges, enbankments, tanks, ghats, wharfs, jetties, wells, channels and drains in any Municipality (not being private property) and not being maintained by Government or at the public expense, now existing, or which shall hereafter be made, and the pavements, stones, and other materials thereof and all erections, materials, implements, and other things provided therefor, shall vest in, and belong to the commissioners." The question arose in *Chairman Naihati Municipality* v. *Kishori Lal Goswami*, 13 C. 171, whether on the acquisition of a road vested in a Municipality running through the Zamindari of a landlord, the landlord is entitled to any compensation, *Held* that the word "Road" does not mean everything above and below the road, and according to the principles laid down in *The Vestry of St. Mary Newington* v. *Jacobs* (L.R. 7 Q.B. 47) the subsoil did not belong to the Municipality. So it was held in *Madhusudan Kundu* v. *Promoda Nath Roy*, 20 C. 732, that when the land was no longer required for a public road the owner was entitled to have it. *Nihal Chand* v. *Azmat Ali Khan*, 7A 362 ; *Nagar Valab Narsi* v. *The Municipality of Dhandhuka*, 12 B. 490 ; *S. Sunderam Ayyar* v. *The Municipal Council of Madura*, 25 M. 635. To set at rest the question once for all the Legislature added the words "including the soil" after the words "Roads" in section 30 of the Bengal Municipal Act III of 1884 by Bengal Act IV of 1894, section 22. So under the present Act the subsoil also belongs to the Municipality.

Bustee Lands in Calcutta :—A piece of Bustee land was acquired at the expense of the Corporation of Calcutta and the special L. A. Judge in a reference under section 18 of the L. A. Act refused to admit evidence relating to the under-tenants and the rents paid by them and disallowed questions put to a valuer with regard to sales in the neighbourhood which were not bustee lands ; *Held*, that Cl. (c) of Section 557 (now Section 475 of Act III of 1923 B. C.) of the Calcutta Municipal Act III of 1899 B. C. which amends the L. A. Act, means that when a land is compulsorily acquired, any use to which the land may be put in future should not be taken into consideration in determining its value, but the valuation shall be determined

according to the market-value then existing of the land or the building in the position that the matters then were. That this clause precludes evidence being given of the purposes to which the bustee lands can be put in future and the L. A. Judge rightly refused to admit evidence relating to the under-tenants and the rents paid by them, such matter being not relevant for the purpose of ascertaining the market-value as defined by Cl. (c) of Section 557 ; that the Judge was right in disallowing questions put to the witness with regard to sales of other lands in the neighbourhood which were not bustee lands although in ordinary cases under Section 23 such evidence would have been admissible ; that the presumption under Clause (d) of Section 557 is rebuttable presumption and it is so until the contrary is shown that the Court is entitled to presume that 25 times the annual value of the property as entered in the assessment book is the value of the property within the meaning of sub-Section (2), *Manindra Chandra Nundy* v. *Secretary of State*, 41 Cal. 967: 18 C.W.N. 884. The term "land" as used in Section 557 Cl. (d) of the Calcutta Municipal Act (III of 1889) includes bustee land, and is not restricted in its application to building land.

The term "District" as used in the proviso to Section 557, Cl. (d) of the Act, is equivalent for the term "Ward" and the two terms are synonymous. The meaning of the term "District" as used in the Act cannot be ascertained by reference to an order issued subsequently by the chairman of the Calcutta Corporation for administrative purposes.

The term "Re-assessment" as used in Section 557, Cl. (d) of the Act, is equivalent to Re-valuation, (assessment signifying the official valuation of property for the purpose of taxation or the value assigned to property for this purpose) and not the re-imposition of "rate" or "tax." The re-valuation of bustee land must not be imagined to take place by operation of law from year to year. The valuation does not mean merely the amount of the valuation but covers the whole process or act of valuation ; when a substantial part of the act of assessment or valuation was completed before the commencement of the Act of 1899, it cannot be reasonably maintained that there was a re-assessment after the commencement of the Act because some objection to the re-assessment or re-valuation might have been preferred or disposed of after that date, *Corporation of Calcutta* v. *Bhupati Roy Chowdhury*, 26 Cal. 74, referred to. The presumption laid down in Cl. (d) of Section 557 of the Calcutta Municipal Act III of 1899 does not apply to a case where there has been no re-assessment made after the commencement of the Act for the whole district or ward in which the land acquired is situated. Property, for the purpose of

valuation, cannot be divided into fragments ; it must be taken as a whole and its income ascertained on the assumption that the huts which stood on the land were let out to tenants ; the value of the land cannot and ought not to be determined independently of the huts. Section 557, Cl. (d) of the Calcutta Municipal Act is not limited in its application to cases, where the Municipal authorities acquire land or buildings for themselves, but it includes cases where the acquisition is made for them by the Local Government, *Secretary of State* v. *Belchambers,* 3 C.L.J. 169 following *Harish Chandra Neogi* v. *Secretary of State,* 11 C.W.N. 875. It is certainly inequitable that Corporation having refused to separately assess the land and having elected to treat it as one holding, should have for the purpose of acquisitions departed from this and acquired the two plots in separate proceedings with the result of ousting the owners from the benefit of Section 557 (d) of the Calcutta Municipal Act but the Corporation is not estopped by having assessed the plots as one, from proceeding to acquire the land in two separate proceedings although the effect of the actions of the Corporation has been to deprive the owners of the benefit of presumption raised under Section 557 (d) of the Calcutta Municipal Act, *Shoshi Lal* v. *Secretary of State,* 28 C.L.J. 144. In the case of bustee land in a city like Calcutta the principle of assessing the amount of compensation to be allowed at so many years' purchase of the rental is not unsound. If twenty years' purchase be arrived at after considering the future possibilities of the land for building purposes, the situation of the land, the fact that it has been opened out by new roads, that it is now an open space, and matters of that class, it cannot be said that such a principle of valuation was *per se* wrong or contrary to law. *Amritalal Basak* v. *Secretary of State,* 22 I. C. 78.

Bombay Municipal Act III of 1888 :—Where in a case of set-back, land with building thereon was taken up by the Municipal Commissioner from a private owner under Act III of 1888, Sections 298, 299, 301, held that the amount of compensation awarded to the owner should be calculated with regard to the price given within a few years previously for land of a similar description in the immediate neighbourhood of the land in question. *Municipal Commissioners for the City of Bombay* v. *Syed Abdul Huk,* 18 B. 184. A certain mosque in Bombay was abutted on the North, West and East by public streets. In December 1886, the Municipal Commissioners, pursuant to Section 166 of the Bombay Municipal Act III of 1872 and IV of 1878, required the trustees of the mosque to set back the building on the said three sides for the purpose of improving the public streets. It was contended that the amount of com-

pensation to be paid to the trustees was to be measured by the loss of rent which they would have received for certain rooms which they had proposed to build on the land in question; held that the words of Section 163 of the Municipal Acts III of 1872 and IV of 1878 were intended to insure compensation to the owner for every sort of damage, and not to restrict it to compensation for such damage as he might by his arrangement reduce it to. Compensation becomes due under the section as soon as the corporation takes possession, which is when the owner begins to build, and there being no words in the section to show a contrary intention, the compensation must be assessed according to the state of things then existing, and not upon the basis of what the owner may have it in his power to do towards diminishing the damage which would otherwise result to him. *Municipal Commissioners for the City of Bombay* v. *Patel Haji Mohomed*, 14 B. 292.

Sub-clause (5) :—This clause provides that besides the damages for injurious affections etc. as provided in the previous clauses, a claimant is enttled to reasonable expenses incidental to change of his residence or place of business, when his residence or place of business has been acquired. The loss to an owner, where lands are required or have been taken, omitting all questions of injury to adjoining lands, includes not only the actual value of such lands but all damages directly consequent on the taking thereof under statutory powers. If the owner is in occupation of premises, he is entitled to compensation for damages incurred through the necessity of removal, since these are losses consequent on the taking of his property under statutory powers. Such damages also include the cost of removal by the owner of the furniture and goods and the consequent depreciation in the value of furniture which has been specially fitted, but which is not a fixture attached to the freehold. *Cripps. pp. 106-107.* In assessing the damages incurred consequent on the taking of land under compulsory powers, the ordnary principles of law as to remoteness of damage apply. When a market-gardener was, by reason of the company taking his garden unable to warrant his seeds, which in consequence were depreciated in value, the court held the damage to be too remote and not such as would entitle the claimant in respect thereof to compensation. A claim in respect of the expenses which might be incurred for educating the children of workmen employed in the construction of reservoir was held to be too remote and too uncertain to entitle the claimant to compensation. *In re Tynemonth Corporation and Duke of Northumberland,* (1903) 89 L.T. 557, Cripps, P. 108-109.

Sub-clause (6) :—Besides the damage enumerated above, a claimant is entitled to the damage resulting from diminution

of the profits of the land between the time of the publication of declaration under Section 6 and the time of the Collector's taking possession of the land.

Amendment :—The Legislature has amended Section 23 (1) sub-clause (1) by the Amending Act XXXVIII of 1923 and under the present amended section the Court has to consider the market-value not at the time of declaration under Section 6 as before the amendment but at the time of the publication of the notice under Section 4 (1). The Sub-clause 6 of Section 23 (1) has been left unamended. It is an anomaly why the claimant should not be entitled to the damage resulting from the diminution of the profits of the land between the time of the publication of notice under Section 4 (1) which must be much prior in time than the publication of declaration under Section 6 and the Collector's taking possession of the land.

Sub-clause Six of Section 23 (1) is new and has been introduced by Act I of 1894. Para. 7 of the Preliminary Report of the Select Committee on the Bill to amend the L. A. Act X of 1870, dated 2nd February, 1893, states the reasons for introducing the Sub-clause in the following terms "In Part III we have made the alteration of the Act in detail. Section 24 of the Act (X of 1870) defines the matters to be considered in determining compensation. The Committee are of opinion that the Bill introduced last year rightly required the market value to be taken at the time of the declaration under Section 6, and not, as in the Act, at the time of the award ; but this change in the law required the addition to the section of a clause bringing under the consideration of the Court any diminution in the profits of occupation during the period between the declaration and the Collector's entry into possession, as also the value of any standing crops or trees that may be on the land when he takes possession."

Delay in Acquisition :—The sub-clause contemplates those cases in which, on account of declaration of acquisition, there is diminution in the profits *e.g.* in case of agricultural land when there is no cultivation and in case of building and tenanted lands when there is a falling off of tenants. Ordinarily no compensation is payable on account of delay between the date of the notification and the actual acquisition of land but when damage is actually sustained by reason of such delay, it should be awarded. *Johnston* v. *Secretary of State,* 60 P.R. 191 : 42 I.C. 905 ; *Government* v. *Doyal,* 9 Bom. L.R. 112.

Sub-Section (2).

Amendment:—This was Section 42 of Act X of 1870. The Select Committee by their preliminary report on the L. A. Bill to amend Act X of 1870, dated 2nd February 1893, ob-

served that "It appears more convenient to insert here than in a later part of the Act, the instruction contained in Section 42 of the Act, that in addition to the amount of any compensation due to the owner of the land acquired fifteen *per centum* on the market value shall be given in consideration of the compulsory nature of the acquisition. We have accordingly added a clause to this effect in the Section by which we amend Section 24 of the Act (X of 1870) and the Collector or Judge making the award will find embraced in a single section the whole of the details required for the completion of his estimate of compensation," The Collector had therefore to pay 15 per cent. on the sum awarded according to the provisions of Section 42 of the Act before he can make his title perfect. *Secretary of State* v. *Shamnugaraya Moodaliar,* 16 Mad. 369 (P.C.) : 20 I.A. 80.

Acquisition under Calcutta Improvement Act :—This section is not applicable to acquisition of land under the Calcutta Improvement Act V of 1911 (B. C.). As amended by the Schedule the Section runs as follows: "In addition to the market-value of the land, as above provided, the Tribunal shall in every case, except where the land acquired is situated in Calcutta Municipality and within the area comprised in an improvement Scheme sanctioned under the Calcutta Improvement Act. 1911, award a sum of 15 per cent. on such market-value."

Acquisition under the Bombay Improvement Act :— 15 per cent. was expressly directed to be allowed in addition to compensation by Section 42 of the L. A. Act of 1870 (new Section 23 (2) of Act I of 1894) in consideration of the compulsory nature of the acquisition ; but no such provision is to be found in the Bombay Municipal Act III of 1872 and IV of 1878. It constitutes no part of the compensation, properly so called, for the owner's loss, and cannot, therefore without an express provision for the purpose be allowed by the Court. *Municipal Commissioners for the City of Bombay* v. *Patel Haji Mohomed,* 14 B. 292. *Municipal Commissioner for the City of Bombay* v. *Syed Abdul Huk,* 18 B. 184.

Is Fifteen per cent payable on the Value of the Land only ? :—In *Krishna Bai* v. *Secy. of State for India in Council,* 42 A. 555, the District Judge added 15 per cent. on the net value of the land and then awarded compensation for the buildings and timber. The High Court held that that was not a correct method of calculation. The total value of the property ought to have been found first and then 15 per cent. added on this total as compensation for compulsory acquisition. Trees are "things attached to the earth" and are included in the definition of land in Section 3 (a) of the L. A. Act and this definition must be applied in construction of Section 23 of the Act. The value of such trees as are on the land when the

declaration is made under Section 6 is included in the market-value of the land on which the allowance of 15 per cent. is to be calculated under Section 23 (2) of the L. A. Act. *Sub-Collector, Godavari* v. *Seragam Subbardyalu,* 30 M. 151. The definition of the word "lands" given in the Act is not exhaustive. The use of the inconclusive verb "includes" shows that the legislature intended to lump together in one single expression, *viz*: "land" several things or particulars, such as the soil, the buildings on it, and other interests in it, which all have a separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act may require. *Government of Bombay* v. *Esuf Ali Salibhoy,* 12 Bom. L.R. 34: 5 I.C. 621. When agricultural lands are valued as building sites, the claimants are not entitled to ask that the trees standing on the lands should be separately assessed and valued as fruit-bearing trees, since what is awarded is an inclusive price. *Thareesaruma* v. *Deputy Collector, Cochin,* 45 M.L.J. 339: 18 L.W. 356: (1923) M.W.N. 682: 33 M.L.T. 48: 77 I.C. 347; *Secretary of State* v. *Duma Lall Shaw,* 13 C.W.N. 487. In awarding 15 per cent. compensation for compulsory acquisition the market-value of trees and the wells in land should be added to that of the land. *The Collector of Barielly* v. *Sultan Ahmed Khan,* 95 I.C. 150: (1926) A.I.R. (A) 689.

Is Statutory Allowance Payable on Damages ?—In *Maharaja Sir Ramesswar Sing* v. *Secretary of State,* 12 C.L.J. 56, it was contended on behalf of the Secretary of State that the plaintiff was not entitled to any statutory allowance under Section 23 of the L. A. Act because such Statutory allowance is decreed only on the *Market-value of land,* and the damages assessed on account of disturbance of a ferry, cannot properly be regarded as the market-value of land. The Court held that "It is not necessary for us to consider the matter from this point of view, because the learned Vakil for the appellant *concedes* that he cannot claim additional compensation as a matter of right under section 23 of the L. A. Act." As has been indicated by the case of *Collector of Dinajpore* v. *Girijanath Roy,* 25 Cal. 346 compensation for loss of ferry, when it is awarded under the L. A. Act is not the market-value of land, but is an amount awarded under cl. (4) of Sub-Sec. (1) of Sec. 23. According to English practice an allowance of 10 per cent. for compulsory purchase is applied to the value of lands only, not to incidental damage; this percentage may be taken to cover various incidental costs and charges to which an owner is subject whose land has been taken. *Cripps, p. 111.*

When S. A. is not Allowed:—In a contract for sale of land where a breach takes place on account of the default of

the vendor the purchaser is entitled to be put as far as possible in the position he would have been if the contract had been carried out on the day it was broken and therefore he is entitled to the difference between the contract price and the market-price on the day of breach. The land having shortly after the breach of the contract been acquired by Government for public purposes, held that the plaintiff was entitled to the difference between the price paid by the Government and the contract price but not to the statutory allowance paid by the Government. *Nobin Chandra Shun* v. *Krishna Baroni*, 15 C.W.N. 420. Under Board's Instructions 65 Bengal Land Acquisition Manual 1910, page 74 the statutory allowance of 15 per cent. is not to be added to the amount which may be paid as the capitalized value of the revenue deemed payable in respect of the land acquired, as that amount does not form part of the market-value of the land. But in assessing the amount of compensation due to the Government as landlord, the Government in its capacity as landlord, is entitled as usual to a capitalisation of as much as may be found to be payable in respect of the proportion of the holding that is taken, together with 15 per cent. for the compulsory acquisition; *Monomohon Dutt* v. *Collector of Chittagong*, 40 Cal. 64.

Matters to be neglected in determining compensation.

24. But the Court shall not take into consideration—

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in conse-

quence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or,

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or affected without the sanction of the Collector after the date of the publication of the notification under Section 4, Sub-section (1).

NOTES.

Amendment:—This was section 25 of the old Act X of 1870, with certain alterations in cl. (4) so as to make it quite clear that the Legislature intended to exclude from compensation only a possible depreciation of the acquired land itself from the use to which it will be put, that is to say, if garden lands were appropriated for a latrine, the owner will get compensation as for garden lands without reference to the lower value they will subsequently have. *Select Committee, Second Report, dated 23rd March, 1923.*

A further amendment has been made in cl. (7) by substituting the words "notification under Sec. 4 Sub-Sec. (1)" in place of "declaration under Sec. 6." The effect of this amendment is to enlarge the period during which no costs of improvements on or disposal of the lands acquired, commenced, made or effected *without the sanction of the Collector* shall be taken into consideration by the Court. Under Act I of 1894 Sec. 24 (7) as it originally stood, the period commenced from the date of the declaration under sec. 6. Under the amendment made by the Amending Act XXXVIII of 1923 it relates back to the prior notification under Sec. 4 (1).

Difference between Section 23 and Section 24:—While Sec. 23 lays down the matters which the Court *shall*

take into consideration in determining compensation for land acquired, Sec. 24 lays down matters which the Court *shall not* take into consideration in determining compensation. The Court shall exclude from consideration the following seven points in assessing compensation for the land acquired. (1) The degree of urgency which has led to the acquisition: (2) Any disinclination of the person interested to part with the land acquired (3) Any damage sustained by him which if caused by a private person, would not render such person liable to a suit. (4) Any damage which is likely to be caused to the land acquired or (5) likely to accrue from the use to which it will be put when acquired. (6) Any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put (7) Any outlay or addition or inprovements to land acquired which was incurred after the date of the publication of the notification under Sec. 4 Sub-Sec. 1.

Section 24, Cl. (1). Private Acquisition and Acquisition for Public Purposes:—The degree of urgency of acquisition will not have any effect on the assessment of the valuation of the land, when land is required for public purposes. In the case of acquisition of land by private individuals, the degree of urgency plays considerable part in influencing the valuation of land and the value of the land may rise beyond all proportion, according to the urgency of the demand or by competition. In case of acquisition for public purposes, what the Court has to consider is the market-value, of course, according to the most favourable and lucrative way in which the land can be disposed. The soverign power of every state has authority to appropriate for purposes of public utility lands situate within the limits of its jurisdiction, but it is not deemed politic to exercise this authority so as to interfere with security in the enjoyment of private property or to confiscate private property for public purposes without paying the owner its *fair value*. In *Secretary of State* v. *Basawa Singh*, 19 P.W.R. 1913: 57 P.R. 1913: 17 I.C. 764, it was held that where agricultural land was acquired for a *Mandi* the compensation should be assessed at the amount which similar land in the neighbourhood is likely to fetch for purposes of agriculture. The purpose for which the land is required should not influence the award of compensation. Where a District Board acquired land at a high price by private purchase for the enlargement of a Mandi in order to obviate the delay caused by proceedings under the L. A. Act the fact should not be taken into consideration in assessing the value of other land subsequently acquired through Government.

Section 24, Cl. (2) :—The court shall not take into consideration any disinclination of the person to part with the land acquired. The only thing the court has to do in a reference under Section 18, is to ascertain the market-value of the land acquired at the date of the publication of notification under Sec. 4 (1). All objections, real, imaginary or sentimental, to the acquisition of land must be made before the Collector within thirty days from the date of the publication of the notice under Sec. 4 (1) of the Act and the Local Government is to decide whether, regard being had to the objections of the claimant, they are real imaginary or sentimental and the decision of the Local Government in the matter, is final and the L. A. Court has no jurisdiction to reconsider the matter. It was observed in *Ezra* v. *Secretary of State,* 30 C. 36 : 7 C.W.N. 249, that in making the acquisition of land "the wishes of the owner of the land was wholly irrelevant under the L. A. Act I of 1894." Before the L. A. Amendment Act 38 of 1923 was passed, in fact the wishes of the owner had not to be considered at all and could be excluded altogether from consideration. After the Amending Act 38 of 1923 was passed the wishes of the owner has to be considered both by the Collector and the Local Government, though the Local Government has been given the sole power of deciding as to whether the land should be acquired or not. As the law stands the owner cannot ask the Court to restrain the Government from taking possession because the lands are taken against his will or that he is not willing to part with the land. As soon as the Local Government decides to acquire the land his personal wishes not to part with the land becomes immaterial because the law declares that a declaration to acquire the land for public purposes is conclusive and whatever objections the owner may have on personal grounds must give in for public purposes. In *Collector of Poona* v. v *Kasinath,* 10 B. 585, a claim for damages was put forward on the ground that the employment of a Brahmin cook would be necessary for the service of the temple ; held, that upon the evidence in the case, no such necessity is made out and the grievance that offerings to the idols in the temple would have to be carried through the public way and would thereby lose their religious efficacy, is too sentimental to admit of any compensation being awarded to it.

Section 24, Cl. (3) :—The Court shall not take into consideration any damage sustained by the owner which if caused by a private person, would not render such person liable to a suit.

It should be noted that an owner is not injuriously affected or entitled to compensation unless the damage is such that but for the statutory authority it would have been actionable. Since no action can be brought where damage has resulted from

the authorised use without negligence of statutory powers, the right to compensation is the substituted remedy which the legislature has provided. Where a local authority had a general implied right of access to sewers, and such access had not been prevented, but only rendered less easy and convenient it was held that there would have been no right of action by the local authority supposing the Company had not been protected by the powers of their Act, and that, consequently, no claim to compensation could be sustained. *Mayor of Birkenhead* v. *London & N. W. Railway Co.* (1855) 15 Q.B.D. 572: 55 L.J. Q.B. 48.

The law contemplates that not every kind of damage which, but for statutory powers, would have been actionable, gives claim to compensation. If the damage complained of is a personal injury, or injury to trade or caused by the user and not by the construction of the authorised works the mere fact that but for the statute it would have been actionable is not in itself sufficient to found a claim for compensation. The user being made lawful by statute no cause of action arises with respect to it, although but for the statute, it might be actionable or an indictable nuisance. The application of this principle, or in other words, the question whether damage, complained of in any particular case would have been actionable but for the statute, has given rise to a large number of decisions, which have established the following tests:—

(a) When the subjacent or adjacent support to which the owner of buildings is by law entitled is interfered with and structural damage is occasioned, such owner is subjected to a loss which but for statutory powers, would have given him a right of action, and he has a right to claim compensation. *Metropolitan Board of Works* v. *Mc. Carthy* (1874) L.R. 7 H.L. 243.

(b) When an easement or similar right has been interfered with the loss so occasioned would have been actionable but for statutory power and the owner has a claim to compensation. Interference with access to an ancient ferry attached to the claimants' land (*R.* v. *Great Northern Rail Co.* (1849) 14 Q.B. 25), obstruction of a private road (*Glover* v. ***N. Staffordshire*** *Rail Co.* (1851) 16 Q.B. 912) or of access through a hall which the claimants were entitled to make use of in connection with their property (*Ford* v. *Metropolitan Rail Co.* (1886) 17 Q.B.D. 12) or of ancient light (*Eagle* v. *Charing Cross Rail Co.* (1867) L.R. 2 C.P. 638) or of diminution of the flow of water to which a riparian owner has a prescriptive right (*Mortimas* v. *South West Railway Co.* (1859) 1 Ex. E. 375) are matters for which compensation can be claimed. But one is not entitled to compensation unless his legal right has been interfered with. If promoters construct works, and their character is such that they

could have been constructed by the grantor, the grantee is not subjected to a loss which, but for statutory powers, would have been actionable, and can not maintain a claim to compensation. *Bird* v. *Great Eastern Rail Co.* (1865) 19 C.B.N.S. 268. Interference with a flow of water, to which there is no prescriptive right is not a loss which, but for statutory powers, would have been actionable and there is no claim for compensation. *R.* v. *Bristol Docks Company,* (1910) 12 East 429. "Yet if such water is a common source which everybody has a right to appropriate, no one is justified in injuring the right of appropriation by contaminating the water. *Ballerd* v. *Tomlinson,* (1885) 29 Ch. D. 115. The principle is fully explained by Willis J. in his judgment in *Beckett* v. *Midland Railway Company,* (1867) L.R. 3 C.P. 82: The damage complained of must be one which is sustained in respect of the ownership of the property, in respect of the property itself, and not in respect of any particular use to which it may from time to time be put; in other words it must, as I read that judgment, be a damage which would be sustained by any person who was the owner, to whatever use he might think proper to put the property. Now, that of course is to be taken with the limitation that a person who owns a house is not to be expected to pull it down in order to use the land for agricultural purposes. That would be putting the judgment in *Ricket* v. *Metropolitan Rail Co.* (L.R. 2 H.L. at p. 187) to an absurd extent. The property is to be taken in *Status Quo,* and to be considered with reference to the use to which any owner might put it, in its then condition, that is, as a house." In *Maharaja Sir Rameswar Singh* v. *Secretary of State,* 34 Cal. 470: 11 C.W.N. 356: 5 C.L.J. 669, it was held that no damages can be claimed on account of the losses sustained by reason of the construction of the Railway bridge; for instance, if the Railway Company had not acquired the lands used as landing places for the ferry, and had merely constructed a bridge across the river, as a result of which the traffic over the ferry was diminished, no damages could be claimed, not at any rate, unless it was established that the ferry owner had an exclusive franchise, that is, an exclusive right to carry passengers and goods across the river. In other words, the taking of property, that merely injures a franchise, but does not interfere with the exercise of it is not such a taking of property from the owners of the franchise, as to require compensation. Reference may be made in this connection to the case of *Hopkins* v. *Great Northern Railway,* (1877) 2 Q.B.D. 224, in which it was held that the owner of a ferry cannot maintain an action for loss of traffic, caused by a new highway by bridge or ferry made to provide for a new traffic; in that case, the owner of the ferry franchise unsuccessfully claimed compensation for loss of profits, caused by a railroad

built across the stream. The same view was taken in the cases of *Moses* v. *Sanford,* (1883) 11 Lee. (Tennesse) 731 and *Hyde's Ferry* v. *Davidson County,* (1891) 91 Tennesse 291 : 18 S.W. 626 : in the former of these cases, it was held that the profits of the ferry franchise had been affected, not by the acquisition of the land over which the bridge was built, but by the opening of the bridge for travel across the river. The case, however, is different where the land, which is used as the landing place for the ferry, is acquired. In such a case, the access to the river, and with it, the exercise of the franchise is destroyed, and consequently compensation is payable. See *Collector of Dinajpore* v. *Girija Nath Roy,* (1897) I.L.R. 25 Cal. 346, and *Reg.* v. *Great Northern Ry.,* (1849) 14 Q.B. 25 ; 80 R.R. 203. See also the observations in *Cowes Urban Council* v. *Southampton,* etc. M. S. P. Co. (1905) 2 K.B. 287. In other words, where the ferry landing and the ferry franchise remain precisely as before, though the profits are liable to be depreciated by the new mode of travel, legitimately created, no compensation can be claimed ; but where by reason of the acquisition itself, the exercise of the franchise or the use of the property pertaining to the franchise, is interfered with, damages can be rightly claimed.

Section 24, Cl. (4) :—With reference to the clause (4) of Section 24 which was Cl. (4) of Section 25 of Act X of 1870, the Government of Bombay pointed out the difficulty of discriminating accurately between clause (3) of Section 24 (now Section 23) and clause 4 of Section 25 (now Section 24). The Select Committee by their Second Report dated 23-3-1893, explained the difference between the above two provisions of the L. A. Act I of 1894 in the following terms "The former permits to be taken into consideration in an award of compensation any damage sustained by reason of the acquisition injuriously affecting *other property* of the owner. The latter excludes from consideration any damage caused by the use to which the land acquired will be put and it was contended that under the latter clause it was doubtful whether an owner could be compensated for the damage caused to the rest of the building-site by the construction on the part of it of a public latrine. We think that even as the Act at present stands, there is no doubt of the right of the owner to compensation for damage of this sort : but we have so altered Cl. (4) Section 24 of the Bill as to make it quite clear that we exclude from compensation only a possible depreciation of the acquired land itself from the use to which it will be put, that is to say, if garden lands are appropriated for latrine, the owner will get compensation as for garden lands without reference to the lower value they will subsequently have."

The only damage the claimant is entitled to, between the date of declaration or taking possession by the Collector, has been provided for in Cl. (6) of Section 23 (1) which provides that in determining the amount of compensation to be awarded for land acquired under this Act the Court shall take into consideration sixthly the damage, (if any) *bona fide* resulting from the diminution of profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

Cl. 5.—Prospective Value :--In assessing the amount of compensation payable when land is taken the probable use to which such land may be put is necessarily an element to be taken into consideration. Land which may probably be used for building purposes cannot be valued on the same basis as merely agricultural land. *R.* v. *Brown,* (1867) L.R. 2 Q.B. 630. But although prospective value is a necessary element in the assessment of compensation such value must be entirely excluded where it would arise from the construction of the particular works authorised by the Act, which gives compulsory powers. *It is a recognised principle to exclude from the assessment of compensation any enhancement or diminution in value consequent on the construction of works authorised by the Special Acts under which the assessment is made. Cripps.* p. 104. In *Penny* v. *Penny,* (1868) L.R. 5 Eq. 227, Wood, V. C. says:—"As to the value of the interest, it appears to me clear that the plaintiff's interest is not to be treated as having been increased through an act of the Board of Works. One might as well value the interest of the improvements which have taken place in consequence of the houses having been thrown down and other constructions made, and so on. It is not the interest which has been acquired by the Board that has to be estimated but the *value* of the interest taken from the person with whom the Board deals. The Scheme of the Act I take to be this, that every man's interest shall be valued *rebus sic Stantibus,* just as it occurs at the very moment when the notice to treat was given."

The question of market value of land at the date of acquisition does not depend on the result of acquisition. *Umar Buksh* v. *Secretary of State,* 46 I.C. 906. The fact that a shop-keeper is willing to pay a large price for a shop in a *Mandi* or so near a Mundi as to enable him to enjoy the benefit enjoyed by the proprietors of the shops in the Mandi, in the event of his being fortunate enough to receive sanction for the purchase under the Alienation of Land Act, should not be considered in assessing the value for the purposes of the L. A. Act unless it is shown that the sanction would be granted for the purchase.

The evidence of witnesses, who merely give opinions as to the value of land or express their willingness to purchase it should be excluded in determining the amount of compensation. *Secretary of State* v. *Basawa Singh,* 17 I.C. 764: 19 P.W.R. 1913: 57 P.R. 1913. In *Secretary of State* v. *Charlesworth Pilling & Co.,* 26 Bom. 1 (P.C.): 5 C.W.N. 35*n.* and 138*n,* the lower appellate Court observed: "When we consider the potential or prospective value of the land taken whether what was or is now mere agricultural land will probably in a few years' time become valuable, we must bear in mind the fact that all this land is in close proximity and contiguous with the terminus of a Railway running many hundreds of miles into the heart of the African continent...... A Railway must increase trade and traffic and the value of building sites near its most important stations and the Court held that it is ligitimate to infer that the railway had been a most important factor in effecting it." In commenting on this part of the judgment of the lower appellate court the Judicial Committee of the Privy Council observed—"Their Lordships cannot read this part of the judgment without seeing that the learned judges have admitted into their minds those very considerations which the Act directs them to exclude, *viz.,* speculations on the value likely to be conferred on the land taken for the railway by the construction of the railway itself. To what extent valuation has been affected thereby does not appear but it may easily account, even if standing alone, for any amount of increase over a market-price which has been inferred from an examination of actual transactions." In *Manmatha Nath Mitter* v. *Secretary of State,* 25 Cal. 195 (P.C.) the Judicial Committee observed that "there is an express provision in Section 25 (now Section 24) under Act X of 1870 that the assessor shall not take into consideration any increase in the value of the land acquired likely to accrue from the use to which it will be put. That points to the time when the land is acquired as the time for ascertaining its value. Independently of that provision it would lead to very strange and capricious results if changes in the conditions of the land between the time when it was taken and the actual conclusion of the award were to increase or lessen its value. The time of awarding compensation must be construed as meaning the time of compensation, the time at which the right to compensation attaches". Speculations as to the effects which any suggested developments may produce on prices must be excluded, except to the extent to which it is shown that such speculation had actually entered into the market-price of the land to be acquired at the date of the declaration. Where, therefore, on the date of such declaration there is a scheme or development of the town and that was known generally, enhancement in the value

of the market-rates consequent on such development must be taken into account for determining the market-value of the land to be acquired, *Marwari Padamji* v. *Deputy Collector of Adoni,* 27 M.L.J. 106: 24 I.C. 141. The purpose for which the land is acquired should not influence the award of compensation, *Secretary of State* v. *Baswa Singh,* 17 I.C. 764: 57 P.R. 1913: 19 P.W.R. 1913.

Section 24, Cl. (6) :—In determining the amount of compensation to be awarded for land acquired under Act I of 1894, the Court shall not take into consideration any increase to the value of the *other land* of the person interested likely to accrue from the use to which the land acquired will be put.

This clause contemplates acquisition by the Government of the "other land" besides the "land acquired" in Cl. (5) of a person interested. In valuing such "other land" it is not open to the claimant to urge that there has been or is likely to accrue an increase to the value of the other land from the use to which the land acquired will be put nor is it open to the Court to take into consideration any such increase in the value of the other land in determining the amount of compensation to be awardeed in case of acquisition of such other land by virtue of Section 49 or any other provision of law. The principle is well illustrated by Mookerjee J. in the case of *Manmotho Nath Mullick* v. *Secretary of State,* 28 C.W.N. 461. In certain land acquisition proceedings the claimant contended that in the determination of the value of the land he is entitled to have a higher value put upon his land in consequence of the intention of the Improvement Trust to keep a previously acquired piece of land to the immediate west as an open space: Held, that as the Improvement Trust authorities intended to keep the previously acquired plot as an open space in order that it might be annexed to the land now under acquisition and both amalgamated with an existing open square, the benefit which might accrue to the purchaser from the expressions of intention of the Improvement Trust authorities if carried into effect would immediately result in the destruction of his rights as purchaser. The claimant was, therefore, not entitled to any enhanced value by reason of the intention of the Trust to keep the adjoining land as an open space. When Government notified its intention to acquire for a market and shortly after notifies its intention to acquire land immediately adjoining such land as a reserve for market purposes, the first notification must be deemed to have occasioned an increase in value of the land dealt with in subsequent notification. But when Government requires land which is quarter of a mile or more away from the land required for the market, no rise in value can be deemed to have taken place in such land, *Secretary of State* v. *Govind Ram,* 11 I.C. 838.

Section 24, Cl. (7) :—A claimant whose land is acquired is not entitled to claim any cost incurred in any manner, whatever, either for preservation, maintainance or improvements of the same after the publication of the declaration under Section 6 unless made or effected with the sanction of the Collector. It is also provided by the said section that any disposal of the land by way of sale, mortgage, gift, exchange or lease or in any other manner contrary to the provisions of this section and after the date of the publication of the declaration under Section 6 without the sanction of the collector, is altogether to be excluded from consideration by the Court and is not to be recognised in determining the value of the land. Lord Lindley in *Mercer* v. *Liverpool St. Helens and South Lancashire Railway* (1904) A. C. 461 lays down that "the broad principle appears to be that it is not competent for an owner of land who has received notice to treat to deal with any of his land either taken or injuriously affected by the company, so as to increase the burden of the company as regards the compensation to be made in respect of such land or any of it." It must be regarded as a settled rule of law that there can be but one proceeding for compensation, and that after notice to treat no onerous interests whether in the land taken or in that injuriously affected can be created by the owner to the prejudice of the company. *Mercer* v. *Liverpool St. Helens and South Lancashire Railway* (1903) 1 K.B. 652.

Disposal :—In *Exparte Edwards* (1871) L.R. 12 Eq. 389, the owner after receipt of the notice to treat, agreed to let the property for three years to a person who had previously occupied part of it as a weekly tenant. But it was held that the tenant could not recover any compensation from the undertakers. Romilly, M. R. said : "I am of opinion that the owner's power of dealing with his property is concluded when the notice to treat is served, and that the lease granted subsequently to that period to a tenant cannot properly be compensated for."

Rules as to amount of compensation.

25. *(1)* When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason

(to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

NOTES.

Section 25 (1) provides that in cases of reference to Court under Section 18 for valuation the Court shall not award (1) more than what has been claimed (2) less than what has been awarded by the Collector, *i.e.* Court has no jurisdiction to reduce the award of the Collector nor has it any jurisdiction to award more than what has been claimed. The Section presupposes service of notice under Sec. 9 and filling of a claim by the owner in pursuance of that notice. A District Judge on a reference made to him under the L. A. Act cannot award a less amount than that awarded by the Collector, even though the Collector has by mistake awarded to the claimant a larger sum than he is entitled to. *Ezra* v. *Secretary of State,* 32 C. 605. It is with reference to this clause, the Privy Council points out that "they are precluded by the Act from awarding less than the amount awarded by the Collector." *Rangoon Botataung Co.* v. *Collector of Rangoon,* 40 Cal. 21 (P.C.). Where the District Judge having confirmed the Collector's award, subsequently, on application made by the Government pleader, reviewed his award and made a fresh award reducing the amount awarded by the Collector, *held* that an appeal would lie against the revised award under Section 54 of the L. A. Act. *Chander Lal* v. *Collector of Bareilly,* 44 A. 86: (1921) A.L.J. 871. Section 25 (1) lays down that the amount awarded shall not exceed the amount claimed. This means that it is the total claim that may not be exceeded and not the claim under any particular head. To expect an owner to correctly classify the heads under which compensation can be granted and to penalise him for wrongly estimating the separate items would obviously be inequitable. *Indo-Burma Petroleum Co.* v. *The Collector of Yenang,* 4 Bur. L.T. 250: 12 I.C. 202.

The rule that under the Act the Court is not entitled to award as compensation to a claimant an amount less than the amount offered by the Collector is not infringed if the Court

decreases the amount of market-value of the land and awards additional compensation for severance under Section 23 (1) 4, provided that the total amount awarded is not less than the amount awarded by the Collector. *Bai Jadav* v. *Collector of Broach*, 28 Bom. L.R. 559: (1926) A.I.R. (B) 372: 96 I.C. 316; *Gangadora Sastri* v. *Deputy Collector, Madras*, 22 M.L.J. 379.

Section 25, Cl. (2) :—It is intended by Section 9, Cl. (2) of the Act that the owner of the property about to be acquired should appear and state his claim in the manner provided by the clause, so as to enable the acquisition officer to make a fair, reasonable and proper award based upon a proper enquiry after the proper means have been placed before him for holding such enquiry. Section 25, Clause (2) makes the refusal or omission to comply with the provisions of Section 9 (2) without sufficient cause an absolute bar to the obtaining of a greater sum than that awarded by the Collector, *Secretary of State* v. *Bishan Dat*, 33 A. 376. Section 25 (2) presupposes service of notice under Section 9 and the refusal of the claimant to comply with the requisitions contained therein. The onus is upon the Collector to prove due service of notice, under Section 9, upon the claimant. Where no claim pursuant to a notice under Section 9 of the L. A. Act was made by a party interested to make a claim, held that the L. A. Judge under Section 25 sub-section (2) had no power to make an award for an amount exceeding that awarded by the Collector unless the claimant satisfied him that he had *sufficient reason* for refraining from making his claim in due time. The Judge should state his reasons for allowing such a person to prefer his claim. *Secretary of State* v. *Gobind Lal Bysack*, 12 C.W.N. 263. When a claimant appears but not on the date fixed in the notice, it can not be said that he is not entitled to file any claim before the Collector. The cases of *Secretary of State* v. *Govind Lal Bysack*, 12 C.W.N. 263, and *Secretary of State* v. *Bishan Dat*, 33 A. 376: 8 A.L.J. 115: 9 I.C. 423, are distinguishable, for in these cases the objector never appeared or made any claim prior to the award. It can not be said that the claimant omitted to make a claim pursuant to the notice given under Section 9 merely because he did not make it by the date originally fixed in the notice. Proceedings before the Collector were adjourned from time to time and that the claim, if any, made before the award was a claim pursuant to the notice under Section 9. At any time before giving his award the Collector has jurisdiction to deal with claims made to him under Section 9 (2) of the Act, *Secretary of State* v. *Sham Lal*, 44 I.C. 883. In a case under the L. A. Act (1 of 1894) the owner's claim was not filed until after the period prescribed therefor, but no objection was taken on that score before the Collector: *Held,* that it was too late to raise the objection when the case had come in reference before the

District Judge. *Lachman Prasad* v. *Secretary of State*, 43 A. 652. In *Orient Bank* v. *The Secretary of State*, 7 L. 416, as the bank did not state the specific amount of compensation claimed by it, the District Judge was held incompetent under Sec. 25 (2) to award a sum exceeding the amount awarded by the Collector.

Sufficient Reason :—Non-service of notice under Section 9 of the L. A. Act amounts to *sufficient reason* under Section 25 of the Act for omitting to file proper claims before the Collector, *Burn & Co.* v. *Secretary of State*, 76 I.C. 579 (1923): A.I.R. (C) 513. Where the notification of the Government was defective as therefrom it was not possible to locate the portion and no facilities were given to the claimant for identifying the land and where the notice issued under Section 9 was defective in that it did not give 15 days' time, *held* that the applicant's omission to claim was for sufficient reason within Section 25 (3), *Collector of Chingleput* v. *Kadir*, (1926) A.I.R. (M) 732.

Section 25 Clause (3) : follows as a corollary to section 25 (2). It provides that if the Court is satisfied that there was sufficient reason for not filing the claim in terms of the notice under section 9 the court may award a sum in excess of the amount awarded by the Collector. If the Court is satisfied that there were sufficient reasons for not filing the claim or that the claimant was prevented by sufficient reason from filing his claim the jurisdiction of the Court is not limited by Section 25 (2), that is, the jurisdiction to decide the market-value of the land acquired at the date of the publication of notification under Section 4 (1) and to award the same even if it exceeds the amount awarded by the Collector is not fettered in any way. In a land acquisition proceeding, notice under Section 9 was served on the appellant directing him to appear before the Deputy Collector on a certain date to make a statement and to give particulars of his claims. He appeared before the Deputy Collector on that date and probably made some verbal statements. On the following day he filed a petition stating his claim and about a month after the award was made: *Held*, that the petition filed on the following day should be regarded as a sufficient compliance with the notice under Section 9 of the Act or alternatively should be regarded as a sufficient reason for allowing the appellant to come in under Cl. (3) of Section 25 ; *Gyanendra Nath Pal* v. *Secretary of State*, 25 C.W.N. 71. Where a claimant objected to the amount of compensation offered by the Collector, but withdrew his objection before the District Judge, who, however, allowed an increased amount at the instance of other objectors, held, that under Act I of 1894 the former did not disentitle him from claiming the benefit of the increased amount awarded by the Judge. *Nobin Chunder Sharma* v. *Deputy Commissioner, Sylhet*, 1 C.W.N. 562.

[1]**26.** *(1)* Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause *first* of sub-section *(1)* of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

Form of awards.

[2][*(2)* Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment with the meaning of section 2, clause *(2)*, and section 2, clause *(9)* respectively, of the Code of Civil Procedure, 1908[3].]

NOTES.

Amendment:—Section 26 of the L. A. Act I of 1894 was amended by the Amending Act XIX of 1921 in the following way:—

> "Section 2. Section 26 of the Land Acquisition Act, 1894, (hereinafter referred to as the said Act) shall be renumbered 26 (1) and to the said section the following sub-section shall be added namely:—
>
> "(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, cl. (2) and section 2, cl. (9) respectively of the Code of Civil Procedure, 1908," *Lala Narsing Das* v. *Secretary of State*, 6 L. 69: 1926 A.I.R. (P.C.) 91.

Reason for the Amendment:—The Judicial Committee of the Privy Council in *Rangoon Botataung Company Limited* v. *The Collector, Rangoon*, 40 C. 21: 39 I.A. 197: 12 M.L.T. 195: 16 C.W.N. 961: (1912) M.W.N. 781: 16 C.L.J. 245: 23 M.L.J. 276: 14 Bom. L. R. 833: 10 A.L.J. 271: 5 Bur. L. T.

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1 This section was re-numbered by s. 2 of the Land Acquisition (Amendment) Act, 1921 (19 of 1921).

2 This sub-section was added by s. 2 of the Land Acquisition (Amendment) Act, 1921 (19 of 1921).

3 General Acts, Vol. VI.

205 : 16 I.C. 188 : 6 L.B.R. 150 (P.C.) observed—"As Lord Bramwell observed in the case of *Sandback Charity Trustee* v. *The North Staffordshire Railway Company*, (1877) L.R. 3 Q.B.D. 1, an appeal does not exist in the nature of things. A right of appeal from any decision of any tribunal must be given by express enactment. A special and limited appeal is given by the Land Acquisition Act from the Award of "the Court" to the High Court. No further right of appeal is given. Nor can any such right be implied."......"Their Lordships cannot accept the argument or suggestion that when once the claimant is admitted to the High Court he has all the rights of an ordinary suitor including the right to carry an award made in an arbitration as to the value of the land taken for public purposes up to this Board as if it were a *decree* of the High Court made in the course of its ordinary jurisdiction".

To remove the anomaly created by the above decision and to place the "awards" of Courts beyond all doubts in the same category as "decrees" the above amendment was made and the "award" is now after the passing of the Amendment Act XIX of 1921 a "decree or order of a Civil Court". *Manavikraman Tirumalpad* v. *Collector of the Nilgiris*, 41 M. 943.

What is an Award :—The term "award" has not been defined in the Act but it is used throughout with reference to compensation in some form or other whether it be the amount or the disposal thereof. *Sarat Chandra* v. *Secretary of State*, 23 C.W.N. 378. The decision of a L. A. Court whatever may be its nature, whether passed at a reference under Section 18 of the L. A. Act or under Section 30 or 32, whether the dispute was between the Government and the party interested or only between the parties interested *inter se* is an award ; *Mulambath Kunhammad* v. *Acharath Parakat*, 31 M.L.J. 827 : 5 L.W. 472 : 38 I.C. 373. In *Boloram Bhramaratar Ray* v. *Shamsunder Norendra*, 23 C. 526, it was contended that the order of apportionment of compensation under Part IV of the Act was not an award. But the contention was overruled by the Court in the following terms—"after giving our best attention to the question we must say that the term "award *must include an order for apportionment* under Section 30. Though Section 11 relates only to the award of the Collector there is no reason to suppose that the legislature intended the application of the word to be limited to cases where a final order is made by the Collector and not to use the same word with reference to the same order when made by the Civil Court. By Section 11 the award is to state the true area of the land, the compensation which should be allowed for the land, and the apportionment of the same ; by Section 26 of the Act, the Judge in making an award is to specify the amount awarded under the several

clauses under Section 23, and by Section 30 the Civil Courts are authorised to pronounce a decision upon the question of apportionment ; and if the decision of the Judge upon the question of the amount of compensation is to be called an award, there is no reason why his decision upon the question of apportionment should not also be called by the same name". In *Ram Chandra Rao* v. *Ram Chandra Rao*, (26 C.W.N. 713 : 35 C.L.J. 545 (P.C.) : 24 Bom. L.R. 963), their Lordships of the Privy Council observed that "it is true that in the case of *Sreemutty Trinayani Dasee* v. *Krishna Lal Dey*, 17 C.W.N. 935 following an earlier case *Bolaram Bharmartar Ray* v. *Sham Sunder Narendra*, 23 Cal. 526 it was decided that an order under Section 32 may appropriately be deemed as an integral part of the award made by the Court, but their Lordships regard this as misapprehension as to the meaning of the "award." The award as constituted by statute is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claim the Collector has information, meaning thereby, people whose interests are not in dispute, but from the moment when the sum has been deposited in Court under Section 31 (2) the functions of the award have ceased, and all that is left is a dispute between the interested people as to the extent of their interest. *Such dispute forms no part of the award.*"

Collector's Award.:—Under the Land Acquisition Act there are two perfectly separate and distinct forms of procedure contemplated. The first is that necessary for fixing the amount of compensation and this is described as an "award." *Ramchandra Rao* v. *Ram Chandra Rao*, 26 C.W.N. 713 (P.C.) : 35 C.L.J. 545. It is true that in the cases of *Trinayani Dassi* v. *Krishna Lal De*, 17 C.W.N. 835n, following an earlier case, *Bolaram Bharamaratar Rao* v. *Shamsunder Narendra*, 24 C. 526, it was decided that an order under section 32, may appropriately be deemed as an integral part of the award made by the Court but their Lordships regarded this as a misapprehension as to the meaning of the "award." The award as constituted by the statute is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information, meaning thereby people whose interests are not in dispute, but from the moment when the same has been deposited under section 31 (2) the functions of the award have ceased and all that is left is a dispute between interested people as to the extent of their interest. Such dispute forms no part of the award. *Ram Chandra Rao* v. *Ram Chandra Rao*, 26 C.W.N. 713 : 35 C.L.J. 545 (P.C.).

Invalid Award :—When land is acquired compulsorily under the provisions of the L. A. Act, compensation must be awarded in respect thereof, it being beyond the competence of the Collector or the Special Judge to hold that there is no interest in the land to be acquired for which compensation is payable. Land held by a tenant under Government was acquired under the provisions of the L. A. Act. There was a covenant in the Kabuliat of the tenant that he would give up the land without compensation if the Government required it: *Held*, that whatever the rights of the tenant might be, his land must be assessed and compensation awarded to him under the provisions of Section 23 read with Section 26 of the L. A. Act and that when such compensation has been assessed and awarded, a question of apportionment would arise between the Government on the one hand and the claimant on the other, but that the award of the Collector or the Special Judge without assessment of compensation for the land could not be a valid award : *Bejoy Kumar Addy* v. *Secretary of State*, 25 C.L.J. 476 : 39 I.C. 889.

Were Awards Decrees—Conflict of Views :—An award made under Part III of the L. A. Act was held to be neither a decree nor an order and section 14 of the Lower Burma Courts Act, which provides for appeals from decrees and orders made by a single Judge, exercising original Civil Jurisdiction of the Chief Court does not apply in such cases ; *Collector of Rangoon* v. *Chandrama*, 28 I.C. 260. In the Full Bench case of *Nilkanta Gonesh Naik* v. *The Collector of Thana*, 22 B. 802, it was held that the Land Acquisition Act (X of 1870) did not provide for or contemplate an award for compensation being enforced against the Collector by execution proceedings and there is no general law which enables a Civil Court to enforce such a statutory liability when imposed upon a Collector or other Civil Officer by means of execution proceedings. This view was followed in *Loddah Ebrahim* v. *The Assistant Collector, Poona*, 35 B 146 : 12 Bom. L.R. 839 : 8 I.C. 166, in which it was held that an award under the L. A. Act I of 1894 was not a decree or order capable of execution under the Civil Procedure Code, V of 1908. But in *Zamindars of Dhor* v. *Rana*, P.R. No. 53 of 1906 p. 205, it was decided that an adjudication made by a Court as to compensation or apportionment of compensation is tantamount to a decree within the meaning of Section 2 of the Civil Procedure Code and capable of execution. Following this judgment of the Punjab Chief Court the Bombay High Court in *Nathubhai* v. *Manordas*, 36 B. 360 held "that reading together sections 53 and 54 of the Land Acquisition Act with Section 96 of the Civil Procedure Code, it must be taken to have been the intention of the legis-

lature to put awards under the Land Acquisition Act on the footing of decrees." In *Nabin Kali Debi* v. *Banalata*, 32 C. 921, there was an order of refund and the question raised was whether the order for refund could be enforced as in execution of a decree. The High Court held that "the order directing a refund may be enforced by the imprisonment of the party against whom it is made or by the attachment and sale of his property under Section 254 and 649 of the Civil Procedure Code 1882." Act XIX of 1921 has been enacted for the purpose of removing the conflict of views as regards the question whether awards are decrees and it has now been enacted by the said Act that every such award shall be deemed to be a decree and the ground of every such award a judgment within the meaning of Section 2 (2) of the C. P. Code (1908).

Civil Suit against Award :—When statutory rights and liabilities have been created and jurisdiction has been conferred upon a special court for the investigation of matters which may possibly be in controversy such jurisdiction is *execlusive* and can not concurrently be exercised by the ordinary Courts. *Maharaja Sir Rameswar Singh* v. *The Secretary of State*, 34 C. 470: 11 C.W.N. 356: 5 C.L.J. 669. The Act creates a special jurisdiction and provides a special remedy, and ordinarily when jurisdiction has been conferred on a special court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive and the ordinary jurisdiction of the Civil Court is *ousted*. *Bhandi Singh* v. *Ram Dhin Ray*, 10 C.W.N. 991 : 2 C.L.J. 20n ; *Stevens* v. *Jeacock*, (1848) 11 Q.B. 731 ; *West* v. *Downman*, (1880) 14 Ch. D. 111 ; *Ram Chandra* v. *Secretary of State*, 12 M. 105 ; *Saibesh Chandra Sarkar* v. *Sir Bejoy Chand Mohtap*, 26 C.W.N. 506 : 65 I.C. 711. Whenever a question of title arises between rival claimants it must under the terms of the L. A. Act be decided in the case and can not be made the subject of a separate suit. *Babujan* v. *Secretary of State*, 4 C.L.J. 256. No Civil Court has any jurisdiction to go into any question decided by the L. A. Court. A person who having been made a party to a reference under the L. A. Act had the opportunity and duty of litigating his claim before the Special L. A. Judge but did not then press his claim to any part of the compensation, is not entitled to come again to the Civil Court and reopen the question, *Ranjit Sinha* v. *Sajjad Ahmad Choudhury*, 32 I.C. 922 ; *Secretary of State* v. *Quamar Ali*, 16 A.L.J. 669 : 51 I.C. 501 ; *Kasturi Pillai* v. *Municipal Council, Erode*, 37 M.L.J. 618 : 26 M.L.J. 268 : 10 L.W. 336 : 53 I.C. 646. All questions of title arising between the rival claimants in a L. A. proceeding should be decided by the L. A. Judge in the L. A. Case and should not be left to be decided by a separate suit. The

Court was bound to decide all points, decision of which was necessary to pass orders as to the disposal of the money, including questions arising as to who was the proper heir of the claimant. *Nihal Koer* v. *Secretary of State*, 13 I.C. 550. A decree which apportions compensation made by a Court of whom usch matter has been referred is final and cannot be questioned otherwise than by the appeal permitted under Section 50. *Nilmonee Singh Deo* v. *Ram Chandra Roy*, 4 C. 758.

Res Judicata :—Upon the construction of the L. A. Act a decision of the L. A. Court if not appealable, and if there is an appeal, the decision of the appellate Court is final and not liable to be contested by a suit. *Nilmony Sing Deo* v. *Ramchandra*, 4 C. 758. In *Nobodeep Chunder* v. *Brojendra Lal*, 7 C. 406. Pontefix J., in deciding the question as to whether a decision under the L. A. Act (X of 1870) should be treated as *res-judicata* held that "I should be extremely reluctant to hold that any decision under the L. A. Act, should be treated as *res-judicata* with respect to the title to other parts of the property belonging to persons who may come before the Judge under section 39, because although a decision under Section 39, with respect to the particular money then before the Court is a decision which is final with respect thereto unless appealed from and any party summoned before the Judge and has not appeared is bound by such decision, I don't think that a decision of the Judge with respect to compensation money should be treated as *res-judicata* affecting other parts of the claimant's property"; *Rai Bhaia Disgoj Deo Bahadur* v. *Kalicharan*, 11 C.W.N. 525. An adjucation as to the right of person claiming compensation under the L. A. Act, I of 1894, concludes the question between the same parties in subsequent proceedings, *Mahadavi* v. *Neelmoni*, 20 M. 269 ; *Chawkaram Makki* v. *Vyyaprath*, 29 M. 193. It is not competent to the Civil Court in the case of the same question arising between the parties to review a previous decision no longer open to appeal given by another Court having jurisdiction to try the second case. This principle is of general application and is not limited by Section 11 of the C. P. C., so that the fact that the decision in question was not obtained in a former suit did not make any difference, for it has been recently pointed out by the Judicial Committee in *Hook* v. *Administrator-General of Bengal*, L.R. 48 I.A. 187 : 48 C. 499 : 25 C.W.N. 915, that the principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of the Code in this respect. *Ramchandra Rao* v. *Ramchandra Rao*, 26 C.W.N. 713 : 35 C.L.J. [illegible] (P.C.).

Appeal against Award :—Whatever doubts there might have been regarding appeals against awards of a Court exercising

jurisdiction under the L. A. Act I of 1894 after the decision of *Rangoon Botatoung Company, Limited* v. *The Collector of Rangoon,* 40 C. 21 (P. C.) the matter has been set at rest by the amendments made by the Amending Act XIX of 1921 in sections 26 and 54. Under Section 54, as amended by Act XIX of 1921, all awards are made appealable both to the High Court and the Judicial Committee, subject to the provisions contained therein. *Vide* Notes under Section 54. *infra.*

Costs.

27. *(1)* Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

NOTES.

Reason for the Rule:—"We are of opinion that when the Judge finds the Collector's award to have been inadequate, the Collector should ordinarily pay the costs of the reference, but we have inserted the clause giving discretion to the Court to give the Collector part of his costs whenever the claim of the objector proves to be extravagant." *Select Committee Report,* dated 2nd February 1893, and again: "In section 27 we have widened the discretion of the Judge in the apportionment of costs, to meet an objection pressed by the Lieutenant-Governor of Bengal. It is represented that owners of land frequently suppress the evidence as to the value of their property which it was their duty to adduce before the Collector, hoping to deploy it to greater advantage before the Judge. We have now given express power to the Judge to give effect to this consideration in his [illegible] of costs when he is of opinion that evidence given bef[illegible] has been wilfully kept back in the proceedings befo[illegible] collector." *Select Committee Report,* dated 23rd March, 18[illegible]

Assessment of Costs :—Rule 36 (b) of Chapter VI of the Rules and Circular Orders of the Calcutta High Court provides that "cases under Part III of the Land Acquisition Act shall be deemed to be suits and the fees allowable therein may be calculated either on the amount of compensation decreed in excess of the sum tendered by the Collector or on any smaller amount which the Court in its discretion may think proper." Rule 37 (b) then provides that "if a suit be dismissed for default the amount of the fee to be paid to defendant's pleader shall be left to the discretion of the Court, provided that such fee shall not exceed the moiety of the fee calculated on the whole value of the suit under Rule 35." In *Nanhilal Agrari* v. *Secretary of State,* 11 C.L.J. 217, the claimant applied for leave to withdraw the case ; he was allowed to do so by the District Judge, but was directed to pay full costs to the Government under Rule 37 (a). The High Court in revision held that "full costs can be allowed only if a suit has been dismissed on the merits. It is obvious, therefore, that in no event should an order for costs have been made in excess of half the full fees of the suit."

Pleader's Fee :—Section 27 does not authorise the Court to allow any amount for pleader's fees at its discretion. Where the subject-matter is capable of being valued, pleader's fees must be allowed on the scale laid down in Civil Rules of Practise or on such other Scale as may be in force for the particular Court. *Ekambara Gramany* v. *Muniswami Gramany,* 31 M. 328. According to the Allahabad High Court, proceedings in the Court of the District Judge under the L. A. Act are not suits for money or suits for land, within the meaning of rule 457 of the rules of the 4th April 1894, for the Courts subordinate to the High Court for the North West Provinces. A pleader's fee in such proceedings should be calculated according to rule 461 of the rules. *Kanhaiya Lal* v. *Secretary of State,* 14 I.C. 214. Pleader's costs can be allowed to each side on the difference between the amount claimed and the amount awarded. *Ramzur Singh* v. *Secretary of State,* 174 P.W.R. 1913: 309 P.L.R. 1913: 21 I.C. 270. In such cases the pleader's fee in the Court below can be awarded at five per cent. on the difference between the award of the Collector and that of the judge. *Ram Saran Das* v. *Collector of Lahore,* 9 P.W.R. 1911: 9 I.C. 228. It is the business of the applicant in a L. A. case to put forward before the L. A. Officer every circumstance which might affect the amount of compensation which he demands and if he fails to do so, the Civil Court is justified in ignoring it. For the purpose of taxation of Pleader's fees proceedings taken on reference under section 18 of the L. A. Act should not be treated as a suit within the meaning of the rules contained in para. 272 of the Oudh Civil Digest. Pleader's fees

in such cases should be assessed under rule 9 of the latter paragraph. *Nawab Sajjad Ali Khan* v. *Secretary of State for India*, 25 I.C. 732. The Calcutta High Court has framed the following rules for regulating Pleader's Fees in L. A. Cases. "In this and in the following rules cases under Part III of the. L. A. Act I of 1894 shall be deemed to be suits and the fees allowable therein may be calculated either on the amount of compensation decreed in excess of the sum tendered by the Collector or on any smaller amount which the Court in its discretion may think proper. In the event of the sum tendered by the Collector being decreed Pleaders' fees may be awarded to Government on the difference between that sum and the sum claimed, or on any smaller amount which the court in its discretion may think proper:

Provided that, in any case in which the remuneration under the above rules, shall, in the opinion of the Judge, prove to be insufficient, or in any case not provided for, he shall be at liberty to allow pleader's fees as in miscellaneous cases under Rule 26." *High Court Circular Order*, 1918, Ch. VI Rule 20, (b), (c), (d).

In Cases of Extravagant Claims :—When the claim of an objection to a Land Acquisition Award is found to be exorbitant, speculative and absurdly extravagant, the Counsel's fees for the Secretary of State should be allowed ad-valorem on the amount of appeal. *Faiz Mahammad* v. *Secretary of State*, 17 I.C. 901.

Order of Costs Appealable :—An award of costs is a part of the award and is appealable as such under section 54 of the Act, *Ekambara Gramany* v. *Muniswami Gramany*, 31 M. 328 ; though under Section 35 of Act X of 1870 it was held in *Sreemutty Bamasoondaree Dabee* v *Verner, Collector, under Act X of 1870 for the Town of Calcutta*, 22 W.R. 136: 13 B.L.R. 189, that an appeal does not lie, under this Act, on the question of the amount of costs, which the Judge is to determine in the same way as is done in suit by the taxing officer."

Collector may be directed to pay interest on excess compensation.

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the

rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

NOTES.

Duty of the Collector :—It is the duty of the Collector under Section 34 to pay or deposit on or before taking possession of the land. When the amount of such compensation is not paid or deposited on or before taking possession of the land the Collector shall pay the amount awarded with interest thereon at the rate of 6 per cent per annum from the time of so taking possession until it shall have been so paid or deposited. *Section 34 infra.*

Payment of Interest is Discretionary :—Though "the claimant is entitled as a matter of right to interest at 6 per cent per annum on difference between the amount awarded and that offered by the Collector as has been held in *Rangasami Chetty* v. *Collector of Coimbatore,* 7 M.L.T. 78: 5 I.C. 744, still it is entirely in the discretion of the Court to award interest on the excess amount which the Collector ought to have awarded from the date of taking possession of the land by the Collector to the date of the payment of such excess amount in Court. Though it is in the discretion of the Court to award interest the discretion must be exercised judiciously and not arbitrarily. Interest at 6 per cent should be allowed from the date of the collector's taking possession on the difference between the Collector's award and the price finally assessed unless there is a special reason to the contrary." *Ram Saran Das* v. *Collector of Lahore,* 9 P.W.R. 1911 : 9 I.C. 228 ; *Ram Prosad* v. *Collector of Aligarh,* 40 I.C. 274 ; In *Nursingdas* v. *Secretary of State,* 52 I.A. 133: 23 A.L.J. 113: 48 M.L.J. 386: (1925) A.I.R. (P.C.) 91 : 6 Lah. 69: 29 C.W.N. 822 where their Lordships state :—A small matter of the judgment was the omission of the right to interest to which the appellant is entitled at the rate of 6 per cent. In no case is the question whether the Court is bound to award interest under Section 28 discussed and that point is not altogether free from doubt. If it appears that the claimants did not put forward any extravagant claim but claims which were allowed to a considerable extent, they were entitled to interest at 6 per cent without expressing any opinion as to whether Section 28 is mandatory or not ; *Subramania Aiyar* v. *The Collector of Tanjore,* 97 I.C. 933.

Whether Interest ought to be Allowed to Government :—"The question for determination" in the *Collector of Ahmedabad* v. *Lovji Mulji,* 35 Bom. 255 : 13 Bom. L.R. 259 ;

10 I.C. 818, "was whether interest ought to be allowed to Government on the moneys which having been deposited by them in the District Court, were withdrawn by the claimant under the award in his favour made by that court under the L. A. Act but reversed in appeal by the High Court. The learned District Judge held that Government were not entitled to interest on the ground that the award of interest is in the discretion of the Court, and that having regard to the decision of this Court which, in reversing the award of the District Court, directed each party in the acquisition proceedings to bear his own costs, it must be presumed that this court did not intend the sum wrongly withdrawn by the claimant to carry interest with it. Undoubtedly the award of interest is generally speaking a matter of the Court's discretion except where by the law it is made obligatory. And the question is whether in the circumstances of the present case it is reasonable to award interest." "It is a rule of law that, where a party has wrongfully taken from Court monies deposited in Court by his opponent, that Court has inherent power to enforce refund of the amount with interest, *Mookoonda Lal Pal* v. *Mahomed Samimeah*, 14 Cal. 484 ;*Govind Vaman* v. *Sakharam Ramchandra*, 3 Bom. 42. In the present case the amount which was deposited in Court by the Government was taken away by the respondent because that amount had been settled by that Court to be the amount of compensation to which the respondent was entitled under the L. A. Act. The High Court in appeal reduced the amount to which the respondent was entitled. Under these circumstances the respondent must be held to have had the benefit of the money belonging to Government in excess of that to which the High Court held him entitled. That benefit is represented, not only by the excess amount wrongly taken by the respondent from the District Court but also by the amount of interests which it carried with it."

Is Interest payable on Statutory Allowance:—The only provisions which the Act makes for payment are those contained in sections 40 and 42, Act X of 1870 (corresponding to sections 31 and 23 (2) of Act I of 1894), the former of which imposes a statutory liability upon the Collector to pay the compensation according to the award to the person named therein, and the latter imposes upon him the further statutory liability when the amount is not paid on taking possession, of paying the amount awarded *and the added percentage* with interest on such amount and *percentage* at the rate of 6 per cent per annum," *Nilkanta Gonesh Naik* v. *Collector of Thana*, 22 Bom. 803 (F.B.).

PART IV.

APPORTIONMENT OF COMPENSATION.

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Particulars of apportionment to be specific.

DISPUTE AS TO APPORTIONMENT.

30. When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

Dispute as to apportionment.

NOTES.

Classes of Reference :—It has been seen (vide Section 18 and Notes thereunder) that the L. A. Act provides for two classes of reference to the judge, one to *assess* compensation and the other to *apportion* the compensation, *Taylor* v. *Collector of Purnea,* 14 Cal. 423. The L. A. Act contemplates two perfectly separate and distinct forms of procedure, one for fixing the amount of compensation described as being an award (an appeal from that award or from any part of that award is given to the H. Court under Section 54 of that Act) ; and the other, for determining in case of dispute the relative rights of the persons entitled to the compensation money. When once the amount as to the award has become final, all questions as to

fixing of compensation are then at an end; the duty of the Collector in case of dispute as to the relative rights of the persons together entitled to the money is to place the money under the control of the court and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be, *Ram Chandra Rao* v. *Ram Chandra Rao*, 35 C.L.J. 545: 26 C.W.N. 713 (P.C.). The value of the land acquired under the Land Acquisition Act should ordinarily be determined as a whole, and the question of apportionment of the compensation awarded amongst claimants of different degrees should thereafter be taken into consideration. *Sadhu Charan* v. *Secretary of State*, 31 C.L.J. 63. It has been pointed out in the judicial decisions in Bombay in *Collector of Belgaum* v. *Bhimrao*, 10 Bom. L.R. 657; *Bombay Improvement Trust* v. *Jalbhoy*, 33 B. 483: 11 Bom. L.R. 674; *Government of Bombay* v. *Esufali*, 34 B. 618: 12 Bom. L.R. 34; *Dunialal* v. *Gopinath*, 22 C. 820, that "the value of the land should ordinarily be determined as a whole and the question of apportionment of the compensation awarded amongst claimants of different degrees should thereafter be taken into consideration. This view, however, has not always been accepted in practice. The procedure that had been adopted in the case of *Girish Chandra Ray Chaudhury* v. *Secretary of State*, 24 C.W. N .184: 31 C.L.J. 63: 55 I.C. 155, has been followed as a matter of convenience, namely, that the market-value of the interests claimed by persons who held interests of different degrees in the property acquired has been determined successively and independently of each other. It will be seen that any one who objects to the collector's award has an absolute right under section 18 to have the matter referred to the court and that what the section intends to do merely is to enable the collector himself in certain difficult cases to refer the question to the court *of his own motion*, but nothing will prevent any of the parties who choose to go to the court from doing so. This section allows the Collector to decide, if he can, whilst it gives him an opportunity, of shifting the decision to the Court, and also leaves the parties themselves free to go into Court if they are dissatisfied with the Collector's apportionment." *Proceedings in Council*, "In the section which constituted Part IV of the Act, (apportionment of compensation) we have inserted words which bring under the orders of the court the issue as to the persons entitled to the compensation money as well as that of the share which each is entitled to receive." *Preliminary Report of the Select Committee*, dated 1-2-1893, para 9.

Scope and Object of Section 30:—It should be noted that the only distinction between a reference under Section 18

of the L. A. Act and one made under section 30 thereof, is, that the *reference under the latter section is made solely on the question of title by the acquisition officer of his own motion,* while the *reference under Section 18 is made on the application of persons* interested in the compensation money and not by the acquiring officer on his own motion ; *Hazura Singh* v. *Sunder Singh,* 97 P.R. 1919 : 53 I.C. 589. Section 18 deals *inter alia* with objections as to persons to whom the compensation is payable. Section 30 deals with disputes as to the persons to whom compensation is payable, *Gobindranee* v. *Brindaranee,* 35 C. 1193. When under Section 30 of the L. A. Act 1894, the Collector has referred to the District Judge a dispute as to the apportionment of compensation settled under section 11 of the Act, it is not *ultra vires* of the District Judge to add a party to the proceedings before him having regard to section 53 and section 32 of the (old) Code of Civil Procedure, *Kishan Chand* v. *Jagannath Prasad,* 25 A. 133. In a reference under section 18 of the L. A. Act it is not open to the special judge to go into question raised by the parties who did not object to the award and apply for a reference, *Gobinda Kumar Roy Choudhury* v. *Debendra Kumar Roy Choudhury,* 12 C.W.N. 98. The ordinary rule in a proceeding under the Land Acquisition Act is that a party who had raised no objection to the apportionment of compensation made by the Collector must be taken to have accepted the award in that respect and such person upon a reference made by some other party, who considers himself aggrieved by the award of the collector, is not entitled to have it varied for his own benefit. In other words, the civil court is restricted to an examination of the question which has been referred by the collector for decision, and the scope of the enquiry cannot be enlarged at the instance of parties who have not obtained any order of reference. But the rule is inapplicable to a case where the scope and object of reference by the aggrieved party was not to settle the question of apportionment as between himself and the other party who had raised no objection but merely to obtain a final benefit for both, *Bejoy Chand* v. *P. K. Mazumdar,* 13 C.L.J. 159. A question under this section is one of apportionment and apportionment only, and the question whether a tenant a part of whose tenure has been acquired, should have his rent abated does not fall within this section. *Jagabandhu* v. *Nandlal,* 50 I.C. 798.

Reference under Section 30 after Payment :—That though the L. A. Act clearly contemplates that when there is a dispute as to apportionment the reference to the civil court under section 30 should be made before any payment has been made, still there is nothing in the Act that prohibits the L. A.

Collector from making the reference after the payment of compensation to one of the parties. When such a reference has been made it is undesirable that the party who succeeds in showing that the collector's order was wrong should have to resort to a regular suit to compel the opposite party to refund the compensation to which he has been held not to be entitled, nor can the rights of the opposite party be in any way prejudiced by the reduction of litigation. *Satish Chandra Singhee* v. *Annanda Gopal Das*, 20 C.W.N. 816: 33 I.C. 253. References under section 30 are not subject to limitation and the collector may make them at any time.

Distinctive Feature of Apportionment:—The apportionment of the compensation is entended to be distinct from that of settling the amount of compensation under the previous provisions of the Act, and any dispute as to apportionment, is decided as between those persons who are actually before the court, *Harmutjan Bibi* v. *Padmalochan Das*, 12 Cal. 33. Section 51 of the Old Act X of 1870 contemplated a reference when the question of the title to the land arose between the claimants who appeared in response to the notice issued under section 9 and who set up conflicting claims one against another as to the land acquired which the District Judge as between such persons could determine, *Imdad Ali Khan* v. *Collector of Farakhabad*, 7 All. 817. The market-value of the land acquired may be determined on many hypothetical considerations. But the question of the apportionment of the sum awarded as between the landlord and his tenant must be based not on hypothetical grounds but on the accurate determination of the value of their respective interests in the land. The moment the land is acquired, it ceases to be the property of both the landlord and the tenant, and it is consequently erroneous to bring into consideration the hypothetical assumption that the land would continue to be covered with huts for 42 years and that at the end of that period would be delivered by the tenant to the landlord, *Nayan Manjuri* v. *Hem Lall Dutt*, 32 C.L.J. 137: 58 I.C. 417. In awarding compensation for a vacant piece of land the existence of a hypothetical tenant on each plot was assumed and calculation was made of the respective values of what was designated as landlord's interest and raiyat's interest. The total of the sums which represented the values of these interests was taken as the value of the land: *Held*, that the award was based on unsound principles. *Hem Chandra* v. *Secretary of State*, 31 C.L.J. 204: 56 I.C 758.

Separate Notices of Apportionment Imperative:—A separate notice of the apportionment proceedings is requisite to bind any person by those proceedings and where such a notice has not been served, any party interested,

although served with notice of the proceedings for settling the amount of compensation cannot be considered a party to the proceedings for apportioning it and is not bound by the decision, in the latter proceedings, from bringing a suit under the proviso to section 31 to recover a share of the money so apportioned. *Hermutjan Bibi* v. *Padmalochan Das*, 12 Cal. 33.

Agreement as to Apportionment :—Where no objection is taken under section 18 by a person interested against the apportionment of the compensation money the Collector's award is conclusive as against him under Section 29 of the Act. *L. A. Officer Karachi* v. *Lakhmibai*, 11 I.C. 304. Where the tenants come to a settlement with the landlords accepting definite amounts of the compensation money, the tenants have no further interest and the landlord is entitled to receive the enhanced compensation money. *Secretary of State* v. *Naresh Chunder Bose*, 44 C.L.J. 1: 95 I.C. 459: (1926) A.I.R. (C.) 1000.

Separate suit to Establish Title to Lands Acquired :—The court in a land acquisition case can go into the question of title for the purpose of determining which of the contending parties is entitled to the compensation. *Krishna Kalyani* v. *R. Braunfied*, 20 C.W.N. 1028. In a reference under section 18 of the L. A. Act the District Judge valued the compensation to be given in the case. One H. then applied to the District Judge for payment of the amount to him and the application was opposed by other persons who claimed title to the property, some claiming the whole of the compensation money and other, portions of it. The District Judge's order on the application was:—"This suit be dismissed. The parties may seek redresses in the Civil Court." H appealed to the High Court: *Held* that the order of the District Judge was without judisdiction. He ought to have apportioned the amount of the compensation awarded as he thought fit. *Harish Chandra Chatterjee* v. *Bhobotarini Debi*, 8 C.W.N. 321. Whenever a question of title arises between rival claimants, it must, under the terms of the L. A. Act be decided in the case and cannot be made the subject of a separate suit. *Babujan* v. *Secretary of State*, 4 C.L.J. 256. All questions of title arising between the rival claimants in a L. A. proceeding should be decided by the L. A. Judge in the L. A. Case and should not be left to be decided by a separate suit. The court was bound to decide all points, the decision of which was necessary to enable it to pass orders as to the disposal of the money including questions arising as to who was the proper heir of the claimant who had died after the deposit of money in Court. *Nihal Kuar* v. *Secretary of State*, 13 I.C. 550. No civil court has any jurisdiction to go into any question decided by the L. A. Court. In a claim disposed of by the Collector in the course of L. A. proceedings

under the special procedure prescribed by Act I of 1894 the Collector's order or adjudication of the rights of the owners or claimants to the property for which compensation was assessed and awarded cannot be questioned otherwise than by a reference to the court under the provisions of the Act and the civil courts are not competent to re-open and determine matters disposed of in accordance with the Act in a separate suit. *Amolok Shah* v. *Charan Das*, 16 P.W.R. 1913: 17 I.C. 684. Where on acquisition of land under the L. A. Act a party to it was served with notice he was bound to apply for reference under Section 18 of the same Act when he was dissatisfied with the Collector's award and he could not maintain a suit in the ordinary Civil Court, *Saibesh Chandra* v. *Bejoy Chand*, 26 C.W.N. 506: 65 I.C. 711. The Plaintiff, who was the owner of a plot of land was not entered in the *Khewat* as such. Proceedings having been taken under the L. A. Act for the acquisition of the plot, the Collector gave the notice required by Section 9 (3) of the Act to the person entered in the Khewat as the owner of the plot but no notice was given to the Plaintiff. When the award was made, however, the plaintiff filed a petition of objection that the compensation should be paid to him and not to the recorded owner of the plot and the amount of compensation was consequently put to his credit in the Treasury. No notice had been given to him under Section 12 (2) the Act, and he made no application under Section 18 for a reference to the court. He subsequently brought a suit for a declaration that the acquisition proceedings were null and void for want of proper notice ; *Held* that the suit was not maintainable and that the plaintiff should have availed himself of the procedure laid down in Section 18 of the L. A. Act, *Secretary of State* v. *Qumad Ali*, 16 A.L.J. 669: 51 I.C. 501.

Inherent Power of the L. A. Court to Stay Proceedings :—In a reference to the Improvement Tribunal under Section 18 of the Land Acquisition Act in the apportionment case, one of several Mahomedan claimants, at whose instance the reference was made, made an application for stay of the proceedings pending the disposal by the High Court of certain probate proceedings. The president of the Tribunal refused the application for stay and held that the genuineness and validity of the alleged will should be tried by the Tribunal, but refused to give the applicant time for production of the Will and dismissed the case: *Held*, that the reference should not have been dismissed without the opportunity being given to the claimant to secure the production of the original will which has been lodged in the High Court. Such a course was rendered imperative by reason of the possibly far-reaching effect of the decision upon question of title by Land Acquisition Tribunals.

The Court has inherent power to postpone the hearing of a suit pending the decision of a selected action and to make an order for the stay of cross-suits on the ground of convenience. The inherent power is not to be exercised capriciously or arbitrarily, it is to be exercised to facilitate that real and substantial justice for the administration of which alone courts exist. *Syed Abdul Alim* v. *Badaruddin Ahmed*, 28 C.W.N. 295: (1924) A.I.R. (C) 757; *Soshi Mukhi Debya* v. *Keshab Lal Mookerjee*, 27 C.W.N. 809: (1924) A.I.R. (C) 212.

Where Suit Lies:—On a reference to the District Judge under Sec. 30 of the L. A. Act by consent of parties, the judge passed an order for payment of compensation money to one of them after four months, if in the mean time the other party did not institute a suit to establish his right to the money. The other party did institute a suit within four months but it was withdrawn on objection as to non-joinder with leave to institute fresh suit and then the present suit was instituted in proper form: held that the condition of the judge's order was complied with in the institution of the first suit and that the District Judge's order was passed by consent of parties. The Munsiff had jurisdiction to entertain the suit for determination of the right to money awarded as compensation under the L. A. Act. *Narasinha Row* v. *Ram Rao*, 5 M.L.J. 79; *Harish Chandra Chatterjee* v. *Bhabatarin*, 8 C.W.N. 321; *Bhandi Singh* v. *Ramadhin Ray*, 2 C.L.J. 359 (Exp.); *Pitchuvier* v. *Perumal Konan*, 11 M.L.T. 160: (1912) 1 M.W.N. 163: 13 I.C. 651. A person claiming a portion of the compensation awarded by the Collector in L. A. proceedings is entitled to maintain a civil suit to establish his claims where the question of apportionment of the compensation money has not been determined by the Collector, *Chandu Lal* v. *Ladli Begum*, 18 P.W.R. 1919: 49 I.C. 657.

Principle of Apportionment:—The Collector has under Sec. 11 to enquire into the value of the land and into the respective interests of the persons claiming the compensation and after awarding a sum for compensation he has to apportion the said compensation among all the persons known or believed to be interested in the land of whom or of whose claim he has information. Under Sec. (3) (b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act. It is quite possible that a person may be interested in the compensation money without having an interest in the land in the legal sense of the term. The Act does not indicate *how the Collector is to effect the apportionment* and Secs. 20 and 28 which deal with the proceedings of the Court when a reference has been made under Sec. 18 are also silent on the

question. It is not correct that in apportionment the market-value of each interest is to be ascertained. The various rights of female members of a Hindu undivided family in the joint family property have no market-value, though such members would be interested in the compensation money. What the Collector and the Court have to do is to apportion the sum awarded amongst the persons interested as far as possible in proportion to the value of their interests and it is impossible to lay down any general rule which can be followed. *In Re. the L. A. Act in the matter of Pestonjee Jahangir*, 37 Bom. 76: 14 Bom. L.R. 507: 15 I.C. 771. What the Judge has to do (under Sec. 39 of the Old Act X of 1870) so far as the apportionment is concerned is to "decide the proportions in which the persons interested are entitled to share such amount," such amount is the amount of compensation which has been settled. There is nothing in the section to suggest that the Judge should not decide as between rival claimants to compensation whether the claimants respectively claim the whole amount or proportionate part only, all questions of title upon which the right to share in the amount and the proportion to be awarded to them respectively would depend. *Husaini Begam* v. *Husaini Begum*, 17 A. 273.

No fixed principle can be laid down regarding the apportionment of compensation allowed by Government under Act I of 1894, *Maharaja Bir Chunder* v. *Nobin Chunder Dutt*, 2 C.W.N. 453. Every case must depend on its own circumstances, on the evidence given and the nature of the property. The number of years' purchase which it would be right to allow with regard to one sort of property might not be a fair allowance for other sort of property. *William Heysham* v. *Bholanath*, 17 W.R. 221. Where land which is taken under the L. A. Act belongs to two or more persons the nature of whose interest therein differs, the compensation allotted therefor must be apportioned according to the value of the interest of each person having rights therein so far as such value can be ascertained. *Hirdey Narain* v. *Mrs. M. J. Powell*, 35 All. 9. The determination of the question, who are the persons to whom the amount of compensation awarded for acquisition of land is payable depends upon the ascertainment of the rights and interests of the several claimants to the property at the time of its acquisition, *Chairman, Howrah Municipality* v. *Keshattra Mitra*, 4 C.L.J. 343.

What the Claimant has to prove under Section 30 :— To support claims to lands acquired under Section 30 of the L. A. Act, the claimants must show title or in the absence of title-deeds, effective *occupation*. Evidence of acts of ownership over lands in the vicinity or of parts of the entire plot,

in which the land acquired is situate, is evidence of *de facto* possession of the land acquired only in case of rightful owners and the rule should be applied with caution and reservation in favour of a wrong-doer. *Mohini Mohon Roy* v. *Promoda Nath Roy*, 24 C. 256: 1 C.W.N. 304. If neither party was found to be in possession there was no reason why on the objection of a person not found to be in possession the appellants should be made to refund the compensation money. *Kakkolangara* v. *Kerala*, 6 M.L.T. 139: 2 I.C. 931. A claimant in a land acquisition proceeding can get no share of the compensation without establishing either title to or possession of the land acquired. *Satish Chandra Sinha* v. *Anundo Gopal Dass*, 20 C.W.N. 816.

What Landlord has to prove in case the Land Acquired is Claimed Lakhiraj or Rent-Free :—When the question of title to a plot of land arose between claimants to compensation money paid by Government on acquisition thereof under the Land Acquisition Act, one being the purchaser of the estate at a sale for arrears of land revenue, whilst the other was holding it as lakhiraj : *held*, that the former was in the position of the plaintiff and the burden of proof was on him. *Horihar Mookerjee* v. *Madhab Chandra Babu*, 14 M.I.A. 152. A purchaser of an entire estate sold for arrears of revenue seeking to recover land claimed by the defendant as lakhiraj must prove a *prima facie* case that his mal land has, since 1790 been converted into lakhiraj. The fact that the lands are within the ambit of the estate is not sufficient to meet this burden. *Krishna Kalyani* v. *Braundfield*, 20 C.W.N. 1028: 36 I.C. 184.

Covenant for Apportionment between Landlord and Tenant :—A covenant in a lease that upon acquisition of the premises under the Land Acquisition Act the whole of the compensation for the land should go to the landlord alone, is valid in law and enforceable. Such a covenant is not illegal or contrary to public policy even if the leasehold interest is transferable and the rent is fixed in perpetuity ; *In re Morgan and London and North Western Railway Company* (1896) 2 Q.B. 469 ; *Godadhar Bhatta* v. *Lalit Kumar Chatterjee*, 10 C.L.J. 476. In *Gadadhar Das* v. *Dhunput Sing*, 7 C. 585, the District Judge held, that under a particular clause in the darpatni patta, he was disentitled to any compensation. That clause ran as follows :—"If any land belonging to the estate is taken up for roads, or at the necessity of Government and in case of your having an abatement in the rent of the said land in the patni dowl jama from the Zamindar, you shall have to allow me too a reduction accordingly. I have no concern with

the price." Garth C. J. in delivering the judgment held that the durpatnidar is not disentitled to receive compensation by this clause in the patta, because in this instance the condition has not happened which would disentitle him. He observed "as we read the clause it only provides that in the event of the Government taking the land *and also in the event of an abatement of rent being made by the Zamindar to the patnidar* then the patnidar agrees to be content with a corresponding abatement from the rent which he pays to the patnidar and in that case he relinquishes his claim to the Government compensation. But this relinquishment is to depend upon the two events, the taking of the land by Government, and the abatement being in the patnidar's rent. No abatement has been made in this instance in the patnidar's rent ; and consequently the condition upon which alone the clause was to take effect has not happened." In a suit for rent by a Zemindar against a patnidar the latter claimed abatement of rent on the ground that part of the land included in the patni tenure had been acquired by the Government for public purposes. The Kabuliat executed by the patnidar contained provisions to the effect that if any of the land settled should be taken up by the Government for public purposes, the Zamindar and the Patnidar should divide and take in equal shares the compensation money and a further provision to the effect that the patnidar should "make no objection on the score of diluvion or any other cause to pay rent fixed or reserved by the kabuliat": *Held*, that the patnidar is entitled to abatement. Field J. in delivering the judgment observed "I take it, therefore, that this stipulation that the parties should divide the compensation money in equal moieties is an agreement between them merely as to the apportionment of compensation ; and that it was not intended to lay down any rule between these parties as to abatement of rent which must be taken to be left to the general law of the country, and I think that as the patnidar has suffered a diminution of the area of the thing demised to him he is entitled to abatement of patni rent payable by him." *Uma Sunkar* v. *Tarini Chunder Singh*, 9 C. 571. In *Secretary of State* v. *Bejoy Kumar Addy*, 40 C.L.J. 303: 84 I.C. 732: (1925) A.I.R. (C) 224, the respondents held the land acquired under a grant made in their favour on the 1st February 1861 by the Collector. The settlement was permanent, but under a clause in the deed it was stipulated that if any portion or whole of this land was required for the Government they i.e. the tenants should give up the same without any compensation. The land was acquired for the corporation at its expense. The Government as landlord did not resume the land during a period of fifty three years: *Held*, that the compensation awarded to the Government landlord, namely the capitalised

value of the revenue one-eighth of the amount awarded as compensation was *prima facie* fair.

Muchilika :—A raiyat in occupation of "raiyati land" on the date the Estates Land Act come into operation can also claim compensation in respect of the occupancy right conferred upon him by Sec. 6 (1) of the Act when the land is acquired by Government under the L. A. Act. A Muchilika executed by a tenant prior to Madras Estates Land Act, relinquishing his claim for compensation does not estop him from making the claim in view of the right conferred upon him by the Estates Land Act. Where there are distinct interests in the land, compensation awarded must be for both and not in respect of one alone. *Hotha Virabhodrayya* v. *Revenue Division Law Officer,* 29 I.C. 8.

Apportionment between Zemindar, Putnidar, Darputnidar and Rayat :—

As regards the Zamindar it is a mistake to suppose that his interest in the land is confined entirely to the rent which he receives from the putnidar. He is the owner of it under the Government and in the event of the Patni coming to an end by sale, forfeiture or otherwise, the property would revert to the Zamindar who might deal with it as he pleases in its improved state ; and although in some cases and possibly in his, the chances of the patni coming to an end may be more or less remote there is no doubt that in all cases, the Zamindar is entitled to some compensation for the loss of his rights. At any rate he would be entitled to receive at least as much as the putnidar. *Gadadhar Das* v. *Dhunput Sing,* 7 C. 585.

Patnidar :—There can be no question that the patnidar is entitled to compensation though there may not be any contract to that effect between him and the Zamindar, *Joykrishen Mookerjee* v. *Reazoonissa Bibi,* 4 W.R. 40. If the Patnidar continues to pay and receive the same rent which he did before (acquisition) or if, on the other hand, he both makes an abatement to the darpatnidar, and obtains an abatement from the Zamindar, as a rule, he is no sufferer, because generally speaking the difference between the amount of rent which he pays and the rent he receives, represents the improved value of the land which the gets from his darpatnidar. It may be, of course, that his patni interest would sell in the market for a price larger than the capitalised value of the rent which he receives from his darpatnidar ; and if so, he would be entitled to be compensated for the loss of the difference out of the same payable by the Government. But as a rule the capitalised value of the darpatni over and above the value of his own outgoings would represent the market-value of the

patni interest. *Godadhar Dass* v. *Dhanput Sing,* 7 C. 585. Where land held in putni is taken by Government for public purposes the proper mode of settling the rights of the parties interested is to give the putnidar an abatement of rent in proportion to the quantity of land which has been taken from him and to compensate the Zemindar for the loss of rent which he sustains. Accordingly the compensation awarded was held to have been fairly distributed where the Zemindar received little more than 16 years' purchase of the rent abated and the putnidar received the remainder, *Raye Kissori* v. *Nilkanto Dey,* 20 W.R. 370. In *Bunwari Lal Cnowdhury* v. *Surnomoyee Dassi,* 14 Cal. 749, the District Judge on the authority of *Godadhar Das* v. *Dhanpat Singh,* (7 Cal. 585) held, that the compensation would be divided equally between the Zamindar and the Patnidar. The patnidar appealed and contended that in as much as he had received no abatement of the rent payable by him to the Zemindar, he is entitled to the full amount awarded. The principle of distribution adopted by the District Judge was accepted as correct and in deciding the case their Lordships observed that "it seems to us that *no general principle can be laid down applicable to every case as between Zemindar and the Patnidar.* The apportionment between the Zemindar and the Patnidar will depend partly on the sum paid as bonus for the putni, and the relation it bore to the probable value of the property, and partly on the amount of rent payable to the Zemindar, and also the actual proceeds from the cultivating tenants and under-tenants. It may occasionally happen that the Zemindar receives an extremely high bonus and is content with charging the property with the receipt of a very low rate of rent, or it may be that the bonus is almost nominal and the rent is excessively high, and the Zemindar depends not on the bonus and the interests of the amount so paid and invested in some other may, but on the amount paid periodically as rent, and consequently as between parties standing in these relations, it is necessary to consider all these matters before any conclusion can be arrived at as to their right to any particular compensation." Where a portion of a putni is acquired by Government under the L. A. Act, the putnidar is entitled to abatement of rent at the hands of the Zemindar, if the land taken up by Government is absolutely lost to the putnidar and he is also entitled to some share of the compensation money. In the well known case of the *Burdwan Raj* (S.D.A. for 1860, p. 336) the rule of proportion as to abatement of rent was thus laid down—"As the gross rental of the whole putni is to the gross rent of the land proposed to be taken, so will the entire putni rent be to the particular portion of the rent to be remitted. Then as regards the amount of compensation the rule is thus laid down—"As the

gross profit of the putni is to the profits of the putnidar, so will the gross compensation be to the portion of the compensation the putnidar is entitled to recover." But this latter rule has not been strictly followed in other cases, noteably in the case of *Shama Prosanno Bose Majumdar* v. *Brakada Sundari Dasi*, 28 Cal. 146; *Bhobani Nath Chuckerburtty* v. *Land Acquisition Deputy Collector of Bogra and Moharaja Jotindra Mohan Tagore*, 7 C.W.N. 131. Where the whole of the compensation money for land acquired under the L. A. Act was awarded to the putnidar on the ground that as the Zamindar had not allowed an abatement of rent on account of the land acquired they were not entitled to a share of the compensation money and the Zemindar's case was that as the putnidars did not get themselves registered in the books of the Zemindars under the provisions of the Patni Regulation, thier title was not protected and they were not entitled to claim any portion of the compensation money; *held*, that the putnidars were entitled to the compensation money and the Zemindars to no portion of it. Under Sec. 6 of the Putni Regulation the landlord may demand a fee for the registration in his books of the name of the purchasers of a putni as also security from him, but the omission to pay the fee and the security does not affect in any way the title of the purchasers where rights are perfected upon the transfer by the putnidar and are not in any way contingent for their validity upon the payment of the fee and security. If the Zemindars allow an abatement of rent to the putnidars, the rent abated primarily represents their annual loss and they may reasonably claim out of the compensation money the capitalised value of that rent, but if they do not allow such abatement they do not suffer any immediate loss by reason of the acquisition. *Gunpat Singh* v. *Moti Chand*, 18 C.W.N. 103.

Apportionment between Darpatnidar and Raiyat:—The parties who usually suffer most from lands being taken by the Government for public purposes are either the Raiyats with rights of occupancy or the holders, whoever they may be, of the first paramount interest above the occupancy raiyats. The actual occupier is, of course, turned out by the Government and if he is a ryot with a right of occupancy, he loses the benefit of that right, besides being driven possibly to find a holding and a home elsewhere; and the holder of the tenure immediately superior to the occupancy ryots, whatever the nature of the holding may be, loses the rent of the land taken during the period of his holding. These two cases, therefore, would, generally speaking, be entitled to the largest portion of the compensation and if the darputnidar belongs to the latter class, the larger portion of the compensation ought, pre-

sumably to have gone to him. *Gadadhar Das* v. *Dhunput Singh*, 7 C. 585.

Apportionment between Landlord and Tenure Holder:— In apportioning compensation money awarded under the L. A. Act between the Zemindar and the tenure holder under him the court ought to proceed on the principle of ascertaining what the real interest of each party is in the property and what is the interest each party parts with. Where the lease is permanent and at a fixed rent, the chances of the lease coming to an end or being forfeited being scarcely appreciable by money payment, the interest of the landlord cannot be put higher than the fixed rent he receives, and for this he is entitled to be compensated at so many years' purchase. The tenure-holder who is the real beneficial owner in such a case is entitled to the whole of the remaining portion of the compensation money. *Dinendra Nath Roy* v. *Tituram Mukherjee*, 30 Cal. 801 : 7 C.W.N. 810. But where that is not the case the landlord is entitled to a compensation of as much rent as may be found to be payable in respect of the proportion of the holding that is taken together with 15 per cent for compulsory acquisition and something more with respect to the possibility of enhancement of the value of the land hereafter. In the result the compensation was apportioned among three parties concerned as follows:—"Government receives a rent of Rs. 20/- from the property and it loses the chance of enhancing the rent of the land after the termination of 15 years. We therefore award to Government so much of the compensation as would correspond to 30 years purchase of the rent that accrued due in respect of the land taken which is to include the 15 per cent. As to the relative interests of riayat and under-raiyat the balance of the compensation money shall be awarded to them in the proportion of 3 to the former and 7 to the latter, *Jagat Chandra Dutt* v. *The Collector of Chittagong*, 17 C.W.N. 1004.

Premium or Salami an Important Factor for Consideration :—In a L. A. case there were two sets of claimants, one was a tenure-holder and the others were sub-tenants in actual occupation of the land acquired. The Collector awarded to the tenure-holder the capitalized value of the rent actually recovered by him from the sub-tenants. It was contended on behalf of the tenure-holder that the award was inadequate. On the other hand, it was contended on behalf of the Secretary of State that at the time when the tenant in occupation transferred his interest to the present occupant, the rent being increased from Rs. 24 to Rs. 36 per bigha it was not probable that the rent could be further increased and consequently the capitalized value of the rent was more than adequate.

Mookerjee J. in delivering the judgment observed, "This argument may be conceded not without weight, but it does not take into account one important element in the case. When the rent was enhanced from four annas a cubit to six annas a cubit, a *premium* was paid by the new tenant to the landlord at the rate of Rs. 19 a bigha, in other words, the landlord at the time took the premium and did not claim a higher rent as he might well have done if no premium had been paid. Consequently it was not sufficient to award to the tenure-holder the capitalized value of the rent as then settled. In our opinion the amount awarded by him should be increased by Rs. 192 per bigha. *Girish Chunder Roy Choudhury* v. *Secretary of State*, 24 C.W.N. 184.

Accretion to Parent Tenure :—In the absence of any special circumstances the rate of rent to be assessed upon an accretion should be in proportion to that paid for the parent tenure. When therefore such accreted land is taken up under the L. A. Act, the compensation awarded should be devided by giving the landlord the value of the rent payable in respect thereof with 15 per cent statutory allowance and the balance to the tenure holder, *Chooromoni Dey* v. *Howrah Mills Co., Ld.*, 11 C. 696.

Apportionment between Landlord and Ghatwali Tenure Holder :—In a suit by a Ghatwal to recover compensation money deposited in the Government treasury for land appertaining to a Ghatwali taluk which had been taken for Railway purposes, the defendants who claimed to participate in the compensation were the Zemindars, of whose Zemindari the Ghatwali taluk was a component part and the representatives of one B, who had held a sub-tenure in the Ghatwalli Mahal ; *held*, that, as the Zemindar has sustained no loss, but would continue to receive from Government under Reg. XXIX of 1814, Sec. 4, the same profits as they had hitherto enjoined, they were not entitled to any compensation. As B had not during his life-time any valid title to any portion of the lands taken, but was allowed to remain in possession by the mere sufferance of the Ghatwal, his representatives were not entitled to a share in the compensation ; that the plaintiff being a Ghatwal, and not absolute owner, was entitled only to the interest of the compensation money which he was bound to keep in tact as a part of the Ghatwalli property. *Ramchandra Singh* v. *Raja Mahomet Jowhuruzuma Khan*, 23 W.R. 376 : 14 B.L.R. App. 7. According to Reg. XXIX of 1814, the Zemindar retains an interest in Ghatwalli lands and compensation money for lands taken up under the L. A. Act should be divided by the parties entitled to it in the ratio of their respective interests in the land. The Munsiff found that the

amounts derivable from the lands in question by the Mukuraridar and the Zemindar respectively were Rs. 22/8/- and Rs. 7/8/- out of Rs. 30/- which will make the Mokuraridar's share ¾ and the Zemindar's ¼ and the plaintiff was declared entitled to ¾ and the defendant ¼ of the compensation money. *Bhageerath Moodee* v. *Raja Khan,* 18 W.R. 191.

Apportionment between Landlord and Mourasi Mokurari Tenants:—In *Secretary of State* v. *Sham Bahadur,* 10 C. 769, it was shown that the land acquired was subject to a mokurari lease and as regards the rate of valuation twenty-three years' purchase was allowed by the District Judge and there being no appeal upon that point the figure was accepted by the High Court. In *A. M. Dunne* v. *Nabakrishna Mookerji,* 17 C. 144, a person claimed to hold a mourasi Mokurari title to certain land which was acquired under the L. A. Act but could produce no pottah or evidence of title other than certain rent receipts which showed that he and his predecessors in title had held the land in question for nearly one hundred years at, presumably, a fixed rent, the nature of the tenure not being mentioned in such receipts ; *Held,* that the presumption was, in the absence of any evidence to the contrary, that the claimant had a permanent and transferable interest in the tenure and not merely an interest in the nature of a tenancy-at-will and this presumption was strengthened by the fact that his superior landlord the lakherajdar had made no attempt to eject him or his predecessor-in-title and the compensation money was apportioned between the landlord and tenant in the manner laid down in *Mohendra Nath Bose* v. *Rohini Bewa.* In this case in which it was admitted that the tenant had a right of occupancy but it was denied that the right was transferable and the tenant claimed to be a Mourasi Mokuraridar, their Lordships said :—"We think we cannot do better than follow a decision of a Division Bench of the court in Appeal No. 477 of 1875 in which the parties were the zemindar and a ryot with a right of occupancy. In that appeal both parties were represented and the High Court held, with the assent of both parties, that a fair apportionment would be obtained, by allowing fifteen years of the rental to the landlord (abatement being granted to the ryot) and by dividing the balance between the two parties in equal shares." *Dunne* v. *Nabakrishna Mukherjee,* 17 C. 144 was dissented from in *Nabu Mondul* v. *Chulim Mullick,* 25 Cal. 896. In apportioning the compensation money awarded under the L. A. Act between the land-lord and the tenure-holder the Court ought to proceed on the principle of ascertaining what the value of the interest of the landlord is on the one hand, and that of the tenant, on the other. Where the rent is fixed in perpetuity

the landlord is not entitled to more than the capitalised value of his rent; *Dinendra Narain Roy* v. *Tituram Mukherjee*, 30 Cal. 801, following *Ray Kishore Dassi* v. *Nilkanta De*, 20 W.R. 370; *Gadadhar Das* v. *Dhanpat Sing*, 7 Cal. 585; *Dunne* v. *Nabokrishna Mukherjee*, 17 Cal. 144; *Raja Khettra Krishna Mitra* v. *Kumar Dinendra Roy*, 3 C.W.N. 202; *Shyama Prosonna Bose Mozumdar* v. *Brakada Sundari Dassi*, 28 Cal. 146. Though in the apportionment of compensation-money between the landlord and the tenant in a L. A. proceeding Sec. 50 of the Bengal Tenancy Act has no direct application, the principle involved in that section is a useful guide to the Courts in matters of this nature. *Nundalal Goswami* v. *Atarmani Dassi*, 35 Cal. 762.

Bhati Lands in Bombay:—Two villages of Kanjoer and Vikhroli were granted to the Khot of Powai under a perpetual lease, dated July 7th, 1835. Certain Bhati lands (Waste lands producing grass) in those villages were acquired by Government for Railway purposes under L. A. Act 1894. The Khot claimed the whole of the compensation but the villagers claimed that they had acquired a substantial interest in the Bhati lands by long and continued user thereof adversely to the Khot. The evidence showed that the Bhati lands had been enclosed; that they had been sold by registered sale deeds; that they had passed from hand to hand under these sale deeds and that the Khot was perfectly aware that the villagers were thus dealing with them; *Held* that the villagers had acquired by their action an interest in the Bhati lands and were therefore entitled to compensation. *Vasudev Bhaskar Pendse* v. *Collector of Thana* (P.J. 274) and *Harish Chandra* v. *Sorabji* (P.J. 9 and 444) discussed and distinguished. Apportionment of compensation in respect of the Bhati lands in proportion of one to the Khot and two to the occupants approved. *Vallabhdas Narayanji and Amritlal Amarchand* v. *Special Land Acquisition Officer for Railways*, 46 Bom. 272.

In awarding compensation for the acquisition of khoti lands the value of the interests of the superior landlord must be included in the award and not deducted from the value of the occupant's interest. The method of apportioning compensation between the occupant and the Khot in the proportion of two to one can only be made applicable in the case of Warkas or Bhati lands which are not surveyed and which cannot be considered to be in the exact occupation of any particular tenant. *Gajanan Vinayak* v. *Assistant Collector, Salsette*, 25 Bom. L.R. 480: 85 I.C. 11: (1924) A.I.R. (B) 54.

Toka Lands:—Where Toka lands are being acquired toka tenants are entitled to some consideration in fixing the rate of assessment on the value and the rate at which it would be

capitalised and they are not to be treated as if on the expiry of the period of their leases they would be rack-rented of their lands. *Government of Bombay* v. *Khanderas Ram Chandra Tapade,* 25 Bom. L.R. 794 : 77 I.C. 137 : (1923) A.I.R. (B) 417.

Mirasidars in Madras :—Vilakku money, customarily paid by house-holders in Malabar to the temple on whose lands they are living is in the nature of quit rent and a grant of the said sites to the house-holders by the Rajahs, though conferring a permanent tenure on the grantee is subject to the payment of the quit rent. Though as a rule the landlord would ordinarily be entitled to share with the tenant actually in occupation, in the compensation paid for lands taken up by the Government under the L. A. Act 1894, he may be refused a share if owing to the small extent and value of the land acquired, it is impracticable to apportion the compensation amount. *Cheria Pangy* v. *Krishna Pattai,* 1 L.W. 767 : 28 I.C. 8. Certain lands which had been waste from time inmemorial were taken up by Government and compensation awarded. Claims were made by the Mirasidars for the amount so awarded. The rights of the Government in the lands had been alienated by Government to certain Shrotriemdars, who also claimed to be entitled to the amount awarded as compensation : Held that the shortriemdars were entitled. *Sivantha Naicken* v. *Nattu Ranga Chari,* 26 Mad. 371.

Apportionment between Landlord and Tenant not having Permanent Rights :—A plot of land was acquired under Act X of 1870 for the construction of a road within the town of Calcutta ; the tenants who had erected masonry buildings on portions of the land and who were in possession at the time of the acquisition claimed before the Collector the value of their interests ; but the owner of the land claiming the whole of the compensation money, the matter was referred to the District Judge who found that the lands were originally granted for building purposes, and allowed a share of the compensation money, viz., the value of the buildings, to the tenants. On appeal to the High Court by the owner of the land, on the ground that the respondent's tenures, which were of a temporary character, having come to an end, when the land was acquired by the Municipality, the buildings standing on the land became his property and that the tenants were not entitled to compensation : *Held* that the Judge came to a right finding on the facts, and that the owner of the land was not entitled to the buildings erected by the tenants without being liable to pay them compensation, even if the tenancy had come to an end ; Held also that as the land was acquired by the Corporation during the continuance of the lease, in the sense that the relationship of landlord and tenant was still subsisting

between the parties, and having regard to section 108 Cl. (h) of the Transfer of Property Act, which applies to Calcutta as well as to the Mofussil, the tenants were entitled to the compensation for the buildings. *Juggat Mohini Dassi* v. *Dwarka Nath Bysack*, 8 Cal. 582 distinguished. *Dunia Lal Seal* v. *Gopi Nath Khettry*, 22 Cal. 820. In *Shanker Govind* v. *Kisan*, 45 I.C. 554, the plaintiff, a perpetual lessee of a village claimed from the defendant, a tenant, the entire compensation received by the latter under the L. A. Act in respect of a house site in the *abadi* of the village. The village wazib-ul-arz declared the right of the defendant to occupy the site as long as he pleased, but also declared the right of the plaintiff to resume the site of the house after the occupant left the village, the latter having the right to transfer the materials of the house: *Held* that the defendant had no interest in the land but was a mere licensee to occupy it and that he was not therefore, entitled to any portion of the compensation awarded for the acquisition of the site under the L. A. Act.

Apportionment between Landlords and Tenants where Rents are Enhancible :—The question that arose in *Bhupati Roy Choudhury* v. *Secretary of State*, 5 C.L.J. 662 was how a sum awarded as compensation for certain lands taken under the provisions of the Land Acquisition Act should be apportioned between a landlord and a tenant whose rent is enhancible i.e. whose rent is not fixed in perpetuity. The District Judge capitalised the value of the rent presently payable by the occupancy raiyat at 20 years' purchase, he had also taken into account the chance of the rent being enhanced, and allowed 20 years' purchase of the rent enhanced at 2 annas in the rupee the highest rate practicable. Maclean C. J. in delivering the judgment in appeal observed that the principle upon which compensation money is to be decided in such cases was laid down in the case of *Dinendra Narain Roy* v. *Tetturam Mukherjee*, 30 C. 801 : 7 C.W.N. 810. It is true that was a case of permanent tenure-holder but the underlying principle is the same. If the rent were enhancible the landlord would be entitled to something for the chances of enhancement. The Court was invited to go back and follow the case of *A. M. Dunne* v. *Nabokrishna Mookerjee*, 17 C. 144, which the Court refused to do.

A Yearly Tenant:—A yearly tenant of a tank, is for the purposes of the L. A. Act in the same position as a yearly tenant of agricultural land and equally as much entitled to compensation. *Narain Chandra Boral* v. *Secretary of State*, 5 C.W.N. 349. When land is compulsorily acquired under the L. A. Act the tenants from year to year in respect of such land

are entitled to have their share of the compensation apportioned. *Punniah Nadan* v. *Deivanai Ammal*, 36 M.L.J. 463: 9 L.W. 453: 26 M.L.T. 311: 52 I.C. 247.

Apportionment between Government and Tenants under it :—In assessing the amount of compensation due to the landlord, regard must be had to the question of how much the landlord is actually realising from the land. The Government in its capacity as landlord is entitled as usual to a capitalisation of as much rent as may be found to be payable in respect of the proportion of the holding that is taken, together with 15 per cent for compulsory acquisition, and something more in respect of the possibility of enhancement of the value of the land thereafter. The Government is entitled in law to a higher proportion either by consent of parties or otherwise. *Manmohon Dutt* v. *The Collector, Chittagong*, 40 Cal. 64. It should be noted that in a proceeding under the L. A. Act it is competent to the Court to adjudicate on any question of title to the land acquired, or to apportion the amount of compensation for it as between the claimant and the Government, *Government of Bombay* v. *Esufali Salibhoy*, 34 Bom. 618. Under the L. A. Act what is acquired is the land which includes all that is stated in cl. (a) sec. 3 of the L. A. Act. But in the case of any land in which either the Government have an admitted interest or wherein that interest is a matter of dispute between a claimant interested in the property and the Government, it is open to Government to acquire the property under the Act. When it comes to a question of determing the market-value of the property acquired and the sum payable as compensation for the property acquired to the person having a limited interest in the property it is open to the Court to determine what sum is really payable to the limited owner. The question of title in such proceedings is really incidental to the question of the determination of the market-value of the interest of the claimant in the land acquired, *Mongal Das Girdhardas Parekh* v. *Assistant Collector, Prantijprani*, 45 Bom. 277. In *Government of Bombay* v. *N. H. Moss*, 47 Bom. 218, land of a toka tenure situate at a hill on the North of Bombay was compulsorily acquired by the Government. The annual rent payable to the Government was Rs. 18-5-5p. But the Government had a right to increase the assessment in the year 1929-30 at the rate of 4 per cent on the value of the land. *Held*, that in valuing the interest of Government in the land, the assessment on the land could not be expected to increase in 1929-30 to a higher rate than 2 per cent and the same should be capitalised at 6 per cent and written back at the same rate to the date of acquisition. A method which has been generally used to arrive at the present value of rent is.

to capitalise at a certain rate and then write it back to the date of acquisition, the rate of capitalisation and the rate of writing back being the same.

Noabad Mahal :—A Noabad Mahal held under Government implies a hereditary and transferable title in perpetuity subject to payment of rent for all lands under cultivation. Where certain properties included in a Noabad Mahal held under the Government were acquired under the L. A. Act held that the mere fact that the rent was enhancible did not justify the Court in awarding half the compensation money to Government as Government would not in ordinary course increase the assessment unless the assets of the property also increase, and that the interest of the Government ought to be measured by capitalising the present rent at 30 years' purchase. *Jogesh Ch. Roy* v. *Secretary of State*, 18 C.W.N. 531.

Apportionment between Landlord, Raiyats and Under-Raiyats :—Where a raiyat's rent is fixed in perpetuity, it would be enough in apportioning compensation to capitalise this rent according to the rule land down in *Dinendra Nath Roy* v. *Titurам Mukerjee*, 30 Cal. 801 : 7 C.W.N. 810, in order to arrive at the share due to the landlord ; but where that is not the case, this rule will not be sufficient and some other means of calculation must be adopted. In deciding the question of apportionment between the zamindar and raiyat certain factors should be taken into consideration ; viz. :—the expenses of cultivation, and the fact that the cultivator has a home and a sphere for labour for himself and his family, etc. There is no general rule that in all cases, where compensation has to be apportioned between Zamindar and raiyat with a permanent right of occupancy, the compensation should be apportioned in the ratio of 3/5ths. to the raiyats and 2/5ths to the Zamindar. *Sree Raja Bonomadevana Venkata Narsinha Naidu* v. *Atmuri Subrayadu*, 10 M.L.T. 349 : 2 M.W.N. 401 : 12 I.C. 436. Where occupancy or other rights are claimed in land notified to be acquired under the L. A. Act, the correct rule to be observed is to value the land in the first instance, including all interests in it, and to apportion the amount so ascertained among the parties interested according to their interests. The difference between the market-value and the value of the tenant's interest represents the Landlord's interest. *Rajah of Pittapuram* v. *Revenue Divisional Officer, Coconada*, 36 M.L.J. 455 : 42 M. 644 : 51 I.C. 656 ; *The Collector of Dacca* v. *Haridas Bysack*, 14 I.C. 163. In *Nibas Chandra Manna* v. *Bepin Behary Bose*, 53 C. 407 : (1926) A.I.R. (C) 846 : 96 I.C. 69, it was urged on behalf of the tenant that as between the landlord and occupancy raiyat the proper method

of apportionment must be to give the landlord a sum representing the capitalised value of the rent plus an estimated sum for the value of possible enhancement in the future or possible forfeiture and to give the whole of the balance to the tenant. That method has been adopted in some cases. But in the present case, it was thought inapplicable in as much as the land acquired was *not agricultural land in the midst of agricultural land.* Changing conditions have given it an increased value as being prospective building site. In such circumstances it would not be right first to assess the value of landlord's interest in the land as agricultural land and nothing more and then after deducting the amount, to hand over the balance to the tenant. Their Lordships held that "In the present case the right method would be to approach the subejct from the point of view of what the tenant should get as a tenant of agricultural land, and after capitalising the tenant's interest, to give the whole of the balance to the landlord." The proper course of apportioning compensation money which was awarded by the Collector would have been to ascertain first what was the landlord's interest and secondly, what was the value of the tenant's interest and having found the money value of these to apportion and divide the money accordingly. But in this country it is impossible to take that course ; it is almost impossible to say what is the value of the interest, that is the precise money value of the lessee's interest on the one hand, and on the other, what is the precise money value of the landlord's interest. That being so, the Courts have adopted what perhaps may be called a rough and ready way of settling the matter. It appears from the note to the case of *A. M. Dunne* v. *Noba-Krishna Mukherjee,* 17 C. 144 and *Godadhar Das* v. *Dhunput Sing,* 7 C. 589 that course the courts have adopted is after providing compensation for the amount payable to the landlord as rent and granting abatement to the ryot, to divide the balance between the two parties in equal shares. *Raja Khettar Kristo Mitter* v. *Kumar Dinendra Narayan Ray,* 3 C.W.N. 202. The half and half rule was considered fair in *Purtap Chandra* v. *Nathuram,* 14 P.W.R. 1909 : 103 P.L.R. 1909 : 4 I.C. 1001.

Apportionment between a Raiyat and Non-occupancy Raiyat :—The difference in a question of the principle of distribution of compensation between the rights of an occupancy and a non-occupancy raiyat is not very great. The Liability of a non-occupancy raiyat to enhancement of rent is larger than in the case of an occupancy raiyat ; there are grounds upon which a non-occupancy raiyat may be liable to ejectment which do not apply to occupancy raiyats. These matters should be taken into consideration in apportioning the compensation. *R. Mitter* v. *Anukul Chandra Mookerjee,* 2 C.L.J. 8n.

Apportionment between Landlords and Tenants with Transferable Rights of Occupancy :—It has to be remembered that if there is no custom of transferibility without the consent of the landlords the landlords will be entitled to some compensation for the right, or if within the next 20 years the landlords could have enhanced the rent of the lands. *Aghori Koeri* v. *Kishundeo Narain*, (1926) A.I.R. (P) 16: 3 Pat L R. 111: 6 P.L.T. 797: 88 I.C. 397.

Apportionment between Landlords and Tenants-at-will :—In *Grish Ch. Roy Choudhury* v. *The Secretary of State*, 24 C.W.N. 184: 31 C.L.J. 63 the Court below in concurrence with the Collector had not awarded any compensation to the sub-tenants on the ground that their tenancies were of so precarious a nature that they could not be deemed to have any market value. It was found in evidence that they were tenant-at-will having no transferable interest in the land but prices were paid by the purchasers who thereupon approached the landlord and got his consent to the sale ; *Held* that the sub-tenants had an interest in the land which had a market-value in as much as such sales were common because purchasers were able in usual course to secure recognition from the landlord. *Secretary of State* v. *Bejoy Kumar Addy*, 30 C.L.J. 303.

Apportionment between the Landlord and the Licensee :—Plaintiff, a perpetual lessee of a village, claimed from the difendant a tenant the entire compensation received by the latter under the L. A. Act in respect of a house-site in the *abadi* of the village. The village *Wajib-ul-arz* declared the right of the defendant to occupy the site as long as he pleased, but also declared the right of the plaintiff to resume the site of the house after the occupant left the village, the latter having right to transfer the materials of the house ; *held that the defendant had no interest in the land, but a mere licensee to occupy it* and that he was not therefore entitled to any portion of the compensation money awarded for the acquisition of the site under the L. A. Act. *Shanker Govind* v. *Kissan*, 45 I.C. 554.

Apportionment between Mortgagor and Mortgagee :—In *Basamal* v. *Tazammal Hossain*, 16 All. 78, land was taken up by Government under Act X of 1870 and public notice was given thereof and notification was made that "claims to compensation of all interest in such land may be made to the Collector." *Held* that it was open to the mortgagee decree-holder to put in a claim under Sec. 9 of the Act X of 1870. Having failed to do so they are not entitled by force of a decree prepared under Section 88 of the Transfer of Property Act to attach the amount of compensation which has been awarded by

the Collector to the mortgagor. They might proceed against the remainder of the property which was not taken up and if the proceeds of the sale of that property proved insufficient to discharge the amount due under the decree, they might apply to the court under Section 90 for a decree for the balance. This principle was sought to be applied in *Jotoni Choudhury* v. *Amar Krishna Shah*, 13 C.W.N. 350: 6 C.L.J. 745: 1 I.C. 164, where their Lordships held that "In our opinion when the property covered by the mortgage was under the L. A. proceeding converted into money, the lien which was attached to the property was transferred to that which then represented the property, viz., the compensation standing to the credit of the mortgagor in the collectorate and we can see no reason why the mortgagee in satisfaction of his decree should not be allowed to take out execution against the money in the collectorate. The obvious object of Section 88 of the Transfer of Property Act is to secure the mortgage-debt by transferring the mortgaged property into money and the mere fact that the mortgaged property has been changed into money by some authority other than the Court, would not disentitle the mortgagee from recovering the amount of his debt out of that money or compel him in order to obtain satisfaction of his debt to obtain a further decree under Section 90 of the Transfer of Property Act. Our attention has been drawn to *Basa Mal* v. *Tazamal Hossain*, 16 All. 78, in which Mr. Justice Aikman held that in a case similar to the one before us the proper remedy for the decree-holder was to apply under Section 9 of Act X of 1870 to the Collector in order to obtain satisfaction of his decree out of the compensation money. *We are unable to agree with that decision.* In our opinion a decree-holder is entitled to obtain through the Court which granted him the decree, satisfaction of that decree out of the money awarded as compensation on the acquisition of the mortgaged property by Government, that money representing, so far as he is concerned, the property which was hypothecated to him as security for the mortgage-debt." The same view has been adopted in *Topan Dass* v. *Jaso Ram*, 17 P.R. 1907: 2 P.L.R. 1908, where the property acquired for a public purpose under the L. A. Act formed part of an estate which was mortgaged for an amount larger than the amount awarded as compensation, the mortgagee was held entitled to the whole of the compensation in liquidation of the mortgage-debt. In *Sajjadi Begum* v. *Janki Bibi*, 42 I.C. 793, it has, however, been held, that a sale of property under the L. A. Act operates to effect "destruction of the mortgaged property within the meaning of Section 68 of the Transfer of Property Act and after that, the mortgagee's remedy is only to require the mort-

gagor to give him within a reasonable time another sufficient security for the debt, and on his failure to furnish such security to sue his mortgagor for the mortgage money. There is no authority in the Transfer of Property Act for the proposition that where a mortgaged propered is acquired under the L. A. Act the mortgagee has a charge on the purchase-money."

Interest payable upon Mortgage when Lands Acquired before due date:—In *Prokash Chandra Ghose* v. *Hasan Banu Bibi*, 42 Cal. 1146: 19 C.W.N. 389, on the 28th September 1912, the appellant advanced Rupees 5000/- to the respondent on mortgage of four properties. The mortgage money was payable on the 28th September 1913 and carried interest at 12 per cent. per annum. One of the properties given by way of security was the subject-matter of a proceeding under the L. A. Act. The declaration for the acquisition of the land had been published on 2nd Feb. 1912 and the award of the Collector made on the 20th September 1912. On the 11th October 1912 the mortgagee applied to the L. A. Judge that the money due under his mortgage namely Rs. 5000/- as principal and the Rs. 600/- as interest thereon for one year might be paid to him out of the compensation money. The mortgagee in substance wanted a return of the mortgage money together with interest for the full period of 1 year. The mortgagor did not contest the claim for the principal amount but urged that she was not liable to pay interest for one year. The L. A. Judge held that the mortgagee was entitled to interest only for 1 month. On behalf of the appellant it was contended that under the mortgage contract he was entitled to interest for one year and that the mortgagor was bound to pay that sum even though the mortgage-money was repaid on an earlier date. In *Baktwali Begum* v. *Husain Khanum*, 36 All. 195 (P.C.), their Lordships held that "in the present case the contract between the parties could not be performed according to its letter by reason of the circumstances beyond the control of the parties. The question consequently arose whether he was entitled to the interest for the whole of the term. It is well settled that if the mortgagee makes a demand for payment within the term and the mortgagor complies, the mortgagee cannot insist on the payment of interest for the whole of the term. *Letts* v. *Hutchins*, L.R. 13 Eq. 176; *In Re Moss*, 31 Ch. D. 19 (1885); *Smith* v. *Smith*, (1891) 3 Cl. 550. In the present case the mortgagee might have called upon the mortgagor under Section 68 of the Transfer of Property Act to give additional security. He did not adopt the course and claimed refund of the money, to which the mortgagor consented. Under the circumstances it is plain that the mortgagor

was not bound to pay interest beyond one month. Reliance was placed upon the provisions of Section 108 and 114 of the Land Clauses Act of 1845, relating to the acquisition of mortgaged properties. It is sufficient to observe that the Indian Legislature has not framed similar provisions applicable to this country."

Apportionment between Persons Claiming Adverse Possession :—It is the cardinal principle of law that the party in possession is *prima facie* entitled to the money which was paid for the acquisition of the land until some one else showed that he had a prior claim. *Chandee Charan* v. *Bidoo Budden,* 10 W.R. 48. As between private owners contesting *inter se* the title to the land, the law has established a limitation of 12 years; after that time it declares not simply that the remedy is barred, but that the title is extinct in favour of the possessor. *Ganga Gobind Mandal* v. *The Collector 24 Pargannas,* 7 W.R. (P.C.) 21; *Biswanath* v. *Brojo Mohon,* 10 W.R. 61. On the acquisition of a piece of land under the L. A. Act it was found that the person in possession had taken possession of it on the death of the last male owner and held possession without payment of rent for more than 12 years. He asserted that he held the land under another person and not under the rival claimant who was the reversionary heir of the last male owner: Held that the person in such possession was entitled to the full compensation for compulsory acquisition, having acquired the right to hold the land rent-free by 12 years' adverse possession. *Rajbans Sahay* v. *Ray Mahabir Prosad,* 20 C.W.N. 828: 1 Pat. L.J. 258: 37 I.C. 464. The court in a L. A. Case can go into the question of title for the purpose of determining which of the contending parties is entitled to the compensation. It is not bound to award compensation to the ostensible owner in possession at the time of acquisition, *Krishna Kalyani* v. *A. Braunfield,* 20 C.W.N. 1028: 28 I.C. 184.

Land Emerging from River :—When land emerges from a river it is given to the person who owns the adjacent land. *Haji Umar Din* v. *Khair Din,* 138 P.W.R. 1909: 4 I.C. 1146.

Does Apportionment include Claim to the Entire Compensation:—It should be noted that the Part III of the L. A. Act deals with references as to the amount of compensation and Part IV deals with the apportionment of compensation in cases where there are several "persons interested", that is, as defined by Section 3 persons claiming an interest in the compensation; and by Section 30 where the amount of compensation has been settled under Section 11 if there is any dispute as to the apportionment of the compensation or

any part thereof, the Collector shall refer it to the decision of the Court. In *Kashim* v. *Aminbi,* 16 Bom. 525 a dispute arose between rival claimants as to the *entire* amount of the compensation given on account of the land. A preliminary objection was raised that as in this case the claimants assert an exclusive right to the whole it was contended that there was no question of apportionment. Serjeant C. J. in delivering the judgment held—"We should give the term "apportionment" a liberal construction as including the case where Court has to decide between rival claimants of the entire compensation. It is to be further remarked that all such disputes may end in an apportionment of the compensation." *Rani Hemanta Kumari* v. *Haricharan Guha,* 5 C.L.J. 301.

Is the Apportionment by Court an Award:—The decision of a L. A. Court whatever may be its nature, whether passed on a reference under Section 18 of the L. A. Act or under Section 30 or 32, whether the dispute was between the Government and the party interested or only between the parties interested *inter se* was held in *Mulambathkumhammad* v. *Acharath Parakat,* 31 M.L.J. 827 : 5 L.W. 472 : 38 I.C. 373, to be an award. In *Balaram Bharamaratar Roy* v. *Sham Sunder Narendra,* 23 Cal. 526, it was held that the term award includes an order for apportionment under Section 30. The Judicial Committee, on the other hand, in *Ram Chandra Rao* v. *Ram Chandra Rao,* 26 C.W.N. 713 : 35 C.L.J. 545 (P.C.) observe that "It is true that in the case of *Sreemutty Trinayani Dassi* v. *Krishna Lal Dey,* 39 Cal. 906 : 17 C.W.N. 935n. following the earlier case *Boloram Bharamratar Roy* v. *Shamsunder Norendra,* (23 Cal. 526) it was decided that an order under section 32 may appropriately be deemed as an integral part of the award made by the Court, but *their Lordships regard this as a misapprehension as to the meaning of the award.* The award as constituted by statute is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information, meaning thereby people whose interests are not in dispute, but from the moment when the sum has been deposited in Court under section 31 (2) the functions of the award have ceased ; and all that is left is a dispute between interested people as to the extent of their interest. Such dispute forms no part of the award, and it would, indeed, be strange if a controversy between two people as to the nature of their respective interests in a piece of land should enjoy certain rights of appeal which would be wholly taken away when the piece of land was represented by a sum of money paid into Court." After the decision of the Privy Council, in *Ram Chandra Rao* v. *Ram Chandra Rao,* 26 C.W.N. 713 : 35 C.L.J. 545, overruling

the cases *Trinayani Dassy* v. *Krishna Lal Dey,* 17 C.W.N. 935 and *Balaram Bhramartor Roy* v. *Sham Sundar Norendra,* 23 C. 526, it is futile to contend that the order of apportionment of compensation between rival claimants in a L. A. case is an award or part of an award and appeal lies from an order of apportionment under Section 54 because it is an award or part of an award.

Is the Order of Apportionment Appealable :—Then the question arises that if the order of apportionment of the compensation money between rival claimants in a L. A. case is not an award, under what Section of the L. A. Act would an appeal lie against such an order. Section 39 of the old Act X of 1870 which ran as follows:—"When the amount of compensation has been settled by the Court and there is any dispute as to the apportionment thereof, or when a reference to the Court has been made under section 38, the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount."

An appeal shall lie from such decision to the High Court, unless the judge whose decision is appealed from is not the District Judge, in which case, the appeal shall lie in the first instance to the District Judge. Act X of 1870 having been repealed there is no section in the Repealing Act I of 1894 corresponding to the above section 39 of Act X of 1870. The only section that provides for an appeal in the L. A. Act I of 1894 is section 54 and that provides for an appeal against an "award" or "part of an award." There is no provision under the L. A. Act which expressly provides for an appeal against such an order of apportionment. The Amending Act XIX of 1921 does not touch the question but merely removes the bar to the second appeal to His Majesty in Council as laid down in *Rangoon Botatoung Co.* v. *Collector, Rangoon,* 40 C. 21. Their Lordships observe that a right of appeal must be given by express enactment and cannot be implied. *Sandback Charity Trustees* v. *North Straffordshire Railway Co.,* L.R. 3 Q.B.D. (1887) Their Lordships of the Judicial Committee in delivering the judgment in *Ram Chandra Rao* v. *Ram Chandra Rao,* 26 C.W.N. 713: 35 C.L.J. 545 (P.C.): 24 Bom. L.R. 963 observe that neither this judgment (*Rangoon Botatoung Co.* v. *Collector of Rangoon,* 40 C. 21: 16 C.W.N. 961) nor any other judgment of this board affects the question of *an appeal* on the totally different proceedings that arise *when there is a dispute as between the persons claiming compensation, involving a difficult question of title.* When once the award as to the amount has become final, all questions as to fixing of compensation are then at an end. The duty of the collector in case of dispute as to the relative rights of the

persons together entitled to the money is to place the money under the control of the Court and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be. . . . . . How the proceedings were commenced is a matter that is not material provided that they were instituted in the manner that gave the Court Jurisdiction, *for they ended in a decree made by the High Court and appealable to this Board and being a decree,* an appeal lies from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decision of such Court. *Vide Section 96 C. P. C.* (1908).

PART V.

PAYMENT.

Payment of compensation or deposit of same in Court.

31. *(1)* On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the Local Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and [1]competent to contract in respect thereof.

NOTES.

Object of the Section :—"Chapter V of the Act concerns the payment of compensation. We have added clauses to section 40 (Old Act X of 1870) as amended by Section 12 of the Bill, empowering, on the one hand, the Collector to deposit the amount of his award in Court, when for any reason there is no person able and willing to receive it, and on the other empowering the owner of the land, if dissatisfied with the

1 As to persons who are competent to contract, *see* s. 11 of the Indian Contract Act, 1872 (9 of 1872), General Acts, Vol. II.

award, to accept the amount under protest. To that extent it will no longer be to the advantage of the owner to protract the proceedings and run on a claim for interest; for if, notwithstanding the express privilege given to the owner, he refuses to take the compensation money placed at his disposal, he has no claim to interest on it." *Select Committee Report,* dated 1st February 1893.

"**Section 31** contains the regulations as to the payment of the compensation money. To this we have added additional sections laying down procedure of the Collector and the Judge in those cases in which the occupant of the land acquired is from any disability incompetent to alienate it, or in which the compensation money must remain in deposit till the settlement of a dispute as to title. One of the objections urged by Local Government against the present law was that excessive charges of interest accumulated against Government when owners refuse the Collector's award. The revised Bill met this objection by requiring the Collector to make immediate payment of his award, and empowering the owner to take payment of the compensation tendered, without prejudice to a protest regarding the sufficiency of it. In the case abovementioned, however, it is only fair to the owner that the compensation-money deposited by the Collector should be immediately so invested as to yield him interest till the title to it is settled. We have added a section giving formal power to the Collector with the sanction of the Local Government to adjust compensation by an exchange of land, a method of settlement which has been found in some provinces useful and convenient to all parties." *Cl. 8 of the Report of the Select Committee 23 March, 1893.*

When once the award as to the amount has become final, all questions as to the fixing of compensation are then at an end. The duty of the Collector in case of dispute as to the relative rights of persons together entitled to the compensation money is to place the money under the control of the Court, and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be. *Ramchandra Rao* v. *Ramchandra Rao,* 26 C.W.N. 763 (P.C.): 35 C.L.J. 545.

When Deposit Necessary :—On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, excepting in the following cases, *viz* :—(1) If they shall not consent to receive it, (2) or if there be no persons competent to alienate the land, (3) or if there be any dispute as to the title to receive the compensation or as to the apportionment of it; and in these cases it is the duty of the

Collector to deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted.

Disposal of money in deposit by Court :—As to how the money in deposit in Court under Sections 31 would be disposed of by Court has been dealt with in Sections 32 and 33 of Act I of 1894. Section 32 deals only with these cases in which the money in deposit was awarded in respect of land "which belonged to any person who had no power to alienate the same" and section 33 deals with cases other than those mentioned in Section 32, *i.e.*, with those cases in which the claimants did not consent to receive the compensation or as to the apportionment of it.

Who are Incompetent to Alienate :—Lunatics, Idiots, and Minors, are not competent to alienate. It has been observed by their Lordships of the Judicial Committee of the Privy Council in *Luchmeswar Singh* v. *Chairman, Darbhanga Municipality,* 18 C. 99, that "the guardians of the minors, and the committees of lunaties or idiots shall be deemed respectively the persons entitled to act to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted." "These words," their Lordships observe, "must be read with reference to the obligations and duties of guardians and committees. Although the Court of Wards had no power to alienate the land for the purpose for which it was acquired, possession might have been lawfully taken of it if the provisions of the L. A. Act had been complied with. It is not true, as the High Court seems to have thought that as the Maharajah, if he were of age, might waive the right to compensation, his guardian might do so. The Maharaja, if of age, might have made a present of the land to the town but it was known by all parties that the manager had no power to do this."

Service-Inam :—A service *Inam,* unless enfranchised, is land which the owner is incompetent to alienate within the meaning of Section 31 (2) and 32 (1) of the L. A. Act, *Govinda Goundar* v. *Ramein,* 25 I.C. 600.

Hindu Widows :—Where land which was taken up by the Government under the L. A. Act for public purposes was held at the time by two widows holding the usual Hindu widow's life-estate therein, it was held that the compensation awarded for such land should not be paid over to the widows but should be invested in land to be held on similar terms, *Sheoratan Rai* v. *Mohri,* A.W.N. 1899, 96; *Sheo Prosad Singh* v. *Jalcha Kunwar,* 24 All. 189. A piece of land with some buildings and trees on it was taken up by the Government under the provisions of the L. A. Act 1894. The land

belonged to a Hindu Widaw but evidence was given in her behalf that her husband's native country was Bikaneer, and that according to the personal law, his widow would take an absolute interest in the property left by him, and not merely an ordinary Hindu Widow's estate: *Held*, that the widow was entitled to be paid the whole of the price awarded for the land and not merely to have it invested for her and to receive interest during her life time. *Krishna Bai* v. *Secretary of State*, 42 A. 555: 18 A.L.J. 695: 57 I.C. 520.

Shebaits :—Land dedicated to an idol or to religious and charitable purposes is land belonging to the Shebait or Trustee "who has no power to alienate the same." *Kaminee Debee* v. *Promotho Nath Mookerjee*, 39 C. 33: 12 C.L.J. 597: 10 I.C. 491. The position of a shebait is analogous to that of the manager of an infant. He is entitled to possess and to manage the dedicated property, but he has no power of alienation in the general character of his rights. Section 31 (2) applies to a shebait since he is not competent to alienate the land. *Ram Prosanno Nundy* v. *Secretary of State*, 40 C. 895: 18 C.W.N. 653: 22 I.C. 272. Properties set apart for charities are *prima facie* inalienable; and where such properties are acquired under the L. A. Act the award made thereunder may direct the investment of the compensation money. *Shiva Rao* v. *Nagappa*, 29 M. 17.

Is the Order of Withdrawal of Compensation by the District Judge Binding on the L. A. Court :—It is, therefore, clear that the minors, lunaties, Hindu widows, administrators, and shebaits are; amongst those who are incompetent to alienate property and hence they are not entitled to receive the compensation money from the Collector. In cases of minors and lunaties, their guardians are competent to alienate land with the sanction obtained from the District Judge. This is also the case of a person to whom Letters of administration have been granted. He had no right to alienate the property except with the leave of the Court which has granted him Administration. Where the natural guardian of lunatic in whose name a sum of money representing his share of compensation money paid by the Land Acquisition Collector was in deposit in the court of the L. A. Judge obtained an order from the District Judge under Section 57 of Act IV of 1912 for payment to him of a portion thereof for the maintenance of the lunatic, the L. A. Judge had no jurisdiction to refuse the guardian's application for withdrawing the money. *Satyendra Nath Dey* v. *Secretary of State*, 20 C.W.N. 975.

Deposit of the Compensation Money in Court :—It is the duty of the Government to deposit in Court the whole of the compensation money which it may be required to deposit

by the Act *free from any deduction.* When a demand is made by Court Officials, under Court rules for poundage fees in respect of such deposits Government has to pay such poundage fees in addition to the compensation money. The Court has no power to direct that a portion of the compensation money deposited should be refunded to Government as representing the poundage and fees paid by it when the money is deposited in Court. As the money is compensation in respect of land acquired the Court has power only to direct payment of such money without any deduction to the person or persons interested. When land is acquired for a company, the poundage and fees which may become payable during the course of proceedings, may be recovered by Government from the Company as cost of acquisition. *In Re Pestonjee Jehangir,* 37 Bom. 76: 14 Bom. L.R. 507: 15 I.C. 771. The Government is bound under the provisions of the L. A. Act to have ready in the District court the amount awarded by the referring officer, for distribution according to the decision of the District Court. If the District Court had in a proper reference increased the amount of compensation, Government is bound to pay into Court the amount of increased compensation. *Deputy Collector, Cocanada* v. *Maharaja of Pitapur,* 50 M.L.J. 412: (1926) M.W.N. 128: 93 I.C. 651: (1926) A.I.R. (M) 492.

Failure to Deposit:—It should be noted that the third proviso to Section 31 (2) comes into operation only when clause (2) to Section 31 has been obeyed, that is, when the Collector deposits the amount of the compensation in the Court. In *Deputy Collector, Cocanada* v. *Maharaja of Pitapur,* 50 M.L.J. 412: (1926) M.W.N. 128: 93 I.C. 651: (1926) A.I.R. (M) 492, the District Court directed that the amount awarded by it should be paid to each party. The L.A. Collector, instead of depositing in Court the amount to be apportioned, paid over to the tenants the amount awarded by him to them. Consequently for the Zemindar's share of the total compensation the balance due to him was not available in Court for payment over to him. The Government view was that the Zemindar must recover it from the tenants to whom it was paid in excess and calls in aid the third proviso to Section 31(2). The Court held that this proviso has no application in the present case. It only comes into operation when Section 31(2) itself has been obeyed and does not apply to a case of excess payment wrongfully made. The Government was bound under the provisions of the L. A. Act to have ready in the District Court the amount awarded by the referring officer for distribution according to the decision of the District Court. If the District Court had in a proper reference increased the amount of compensation Government is bound to pay into Court the amount of increased

compensation. The principle is not altered when an apportionment of the compensation amount is increased, and if the referring officer had obeyed Sec. 31 the necessary money would have been there. It is not right that Government should throw on a party, whose property it has compulsorily acquired, the risk and burden of recovering the compensation from some one else to whom Government has wrongfully paid it. Whether Government can by appropriate proceedings recover the excess from those to whom it was paid is for Government to consider.

Power to Question Apportionment by Regular Suit :— The intention of the Legislature to make proceedings under this Act final and to make the mode of dealing with the questions to be raised under this Act exhaustive and self-contained is quite clear. The proviso in Sec. 31 (2) follows, a declaration that "payment of the compensation shall be made by the Collector according to the award to the persons named therein, or in the case of an appeal, according to the decision on such appeal. That no doubt, is intended to include the case of a decision under sec. 39 of the old Act of 1870. It provided that any person who might receive the whole or any part of the compensation awarded under this Act, shall be liable to pay the same and no doubt, compellable by suit to pay the same to the person lawfully entitled thereto, and what the legislature had in view was that if any person by virtue of a particular title, which was not really vested in him at the time should prevail against any person claiming under a different title before the court upon the question of apportionment, he shall be liable and compellable to pay over the money which he may have received under that decision to some other person *not a party to the process* in whom that title really vested, *not that it should be competent to the parties after a full investigation before the Court under Sec. 39 and after an appeal to bring a regular suit and reopen the identical question before a different Court.* A decision of the Court if not appealable and if there is an appeal the decision of the appellate Court is final and not liable to be contested by a suit. *Nilmony Singh Deo* v. *Ram Bandhu Roy,* 4 Cal. 758. In proceedings under the L. A. Act the persons entitled to take land compulsorily, deal only with those who are in possession of it, or who are ostensibly its owners. It may happen that the real owner, being an infant, or a person otherwise under disability does not appeal and is not dealt with in the first instance. There is, therefore, the proviso to the effect that nothing contained in that or the preceding sections shall affect the liability of any person who may receive the whole or any part of any compensation awarded under the Act to pay the same to the person lawfully entitled thereto." This applies only to

persons *whose rights have not been dealt with in adjudications in pursuance of Sec. 38, 39 and 40* (Act X of 1870) and does not permit a person whose claim has been disposed of in the manner pointed out in the Act to have that claim re-opened and again heard in another suit. *Nilmoni Singh Deo* v. *Ram Bhandhu Roy*, 7 Cal. 388 (P.C.). A person claiming a portion of the compensation awarded by the Collector in L. A. proceedings is entitled to maintain a civil suit to establish his claims where the question of apportionment of the compensation money has not been determined, *Chandulal* v. *Ladli Begum*, 18 P.W.R. 1919: 49 I.C. 657. Where property, subject to a mortgage, is acquired by Government under the L. A. Act and the whole compensation is paid to the mortgagor without notice of the mortgagee, the mortgagee may claim a reference under Sec. 18 to the Civil Court and after the expiration of 6 months he is confined by the Act to a suit under Sec. 31 against the person to whom money was wrongly paid. There is no other remedy at all either against the Secy. of State or the L. A. Collector. Where a new right is brought into existence by a statute and a remedy in respect of that right is also given by the same statute, that remedy is exclusive of any ordinary rights. The compensation money payable under the L. A. Act is payable under that Act and that Act only. Any rights in respect of it are creatures of the statute and nothing else. The Statute, in creating the rights, has given the remedies to be exercised in respect of those rights. The principles of the L. A. Act are that the Crown should in the first instance be allowed to recognise the person in possession as ostensible owner. A mortgagee as such need not be recognised at all, though he can within a certain time and within certain limits come in and institute proceedings provided under the Act. *Secretary of State* v. *Kuppusami Chetti*, 46 M.L.J. 361: (1924) M.W.N. 138: 78 I.C. 82: (1924) A.I.R. (M) 521.

When the Suit does not lie:—Some lands were acquired for a Railway and the Collector after serving notice under the L. A. Act, upon the Zaminder and the Putnider apportioned the compensation money half and half between them. Neither party applied for a reference under section 18, to the court under the L. A. Act and the putnider withdrew the amount awarded to him. The Zeminder thereupon brought a suit for recovery of the amount withdrawn by the Putnider on the ground that under the Putni Kabuliat the Putnider was not entitled to any portion of the compensation money: *Held, that the Zaminder having been served with notice under section 9 of the Act, was bound to apply for a reference under section 18 when he was dissatisfied with the award and he cannot maintain a suit in the ordinary Court to re-open the*

question. The Act creates a special jurisdiction and provides a special remedy. And ordinarily when the jurisdiction has been conferred upon a special Court for the investigation of matter which may possibly be in controversy, such jurisdition is exclusive and the ordinary jurisdiction of the Civil Court is oustead. *Bhandi Sing* v. *Ram Dhan Roy*, 10 C.W.N. 991. Under the third proviso to Section 31 Cl. (2) a person who was a party to the apportionment proceedings cannot re-open the question by a regular suit. The proviso must be given a limited application and it applies only to cases when the person was under a disability who was not served with notice of the proceedings before the Collector. *Shaibesh Chandra Sirker* v. *Sir Bejoy Chand*, 26 C.W.N. 506: 65 I.C. 711. If a person, who is interested in any land acquired under L. A. Act has any objection to the measurement made by the Collector as to the amount of compensation awarded by him, such person must obtain a reference to the Court of the special Judge and cannot litigate the matter by a suit in the ordinary Courts. If the objection, however, relates to the person to whom the compensation is payable, or to its apportionment among the persons interested, the matter may be investigated either upon a reference to the Court or having regard to the provision of Sec. 31 Cl. (2) by a suit in the ordinary courts. But although, either of these two methods may be available, if he has made his choice and selected the remedies he cannot, because he has failed in the course adopted, fall back upon the other. *Bhandi Sing* v. *Ramadhin Roy*, 2 C.L.J. 20n: 10 C.W.N. 991. A person who having been made a party to a reference had the opportunity and duty of litigating his claim before the special L. A. Judge but did not then press his claim to any part of the compensation, is not entitled to come again to the Civil Court and re-open the question, *Ranjit Sinha* v. *Sajjad Ahmad Chowdhury*, 32 I.C. 922.

Necessity for Provision for Suit :—In *Rajah Nilmony Singh* v. *Ram Bandhu Roy*, 7 C. 388, their Lordships of the Judicial Committee observed that "it is necessary for the Government, or the persons or Company entitled to take property compulsorily to deal with those who are in possession, or ostensibly the owners; but it may happen, and frequently does happen, that the real owners possibly being infants or persons under disability do not appear, and are not dealt with in the first instance; and therefore a provision of this sort is necessary for the purpose of enabling the parties who have a real title to obtain the compensation money. Their Lordships are of opinion that the Courts of India have rightly held that the *proviso* applies only to persons whose rights have not been adjudicated upon in pursuance of Sections 38 and 39 (corres-

ponding to Section 30 of Act I of 1894), and that it has not the effect, which it would certainly not be reasonable to attribute to it, of permitting a person whose claim has been adjudicated upon in the manner pointed out by the Act, to have that claim reopened and again heard in another suit."

Character of Suit to recover Compensation Money :— In England when money was paid into the Court under the compulsory powers of section 69 of the Land Clauses Act (1845) as compensation for lands taken which were settled or subject to encumbrances, Stuart, V. C. said "I think when money has been paid into Court by reason of the real estate having been taken under the compulsory powers, remains in Court, it is to be held as money or personal estate in the hands of the Court impressed with trusts of real estate." Again he said: "The money in Court is to be considered, for the purpose of the question as to who was entitled to it, real estate." *In re Stewarts Trusts*, 22 L. J. N. S. 369. The land when acquired under the L. A. Act is vested in and in the possession of the Government discharged of all encumbrances therefrom. The rights of parties to the land and to any mortgage on or interest in it are transferred to the compensation money. The money paid into the treasury is to be considered as money or moveable property in the treasury impressed with the trusts and obligations of the immovable property which it represents. Even if the money is considered as immoveable property for the purpose of the question as to who is entitled to it, still it is in fact the money and not the immoveable property. It is the fact that is to be dealt with under section 16 C. P. C. (1882) in order to determine jurisdiction. No doubt, the right to the money must depend upon the proof of the right of the plaintiff as mortgagee and purchaser under the decree, to the land. Such proof, however, will not lead to any determination in the suit of any right to any immoveable property or interest therein but will lead to a determination of a right to property which is in fact moveable. Hence a suit for recovery of the compensation paid for acquisition of land is not a suit within Section 16 for the determination of the right to immoveable property or to any interest therein. *Venkata Viraragavayyangar* v. *Krishna Swami Aiyangar*, 6 M. 344. In *Nurbehary* v. *Anwar Ali*, 8 P.R. 1883, (F.B.), it was held that a suit to recover price of land was cognisable by a Small Causes Court.

Courts by which Suits to recovor Compensation Money are Cognizable :—A suit to enforce the liability of a person, who has received compensation to pay the same to the person lawfully entitled thereto is cognizable by a court of Small Causes. *Mussamat Nurbehary* v. *Anwar Ali*, 8 P.R. (1883) (F.B.) A suit to enforce the liability of the defendant who

had recieved compensation to pay the same to the plaintiff who was entitled to it must be regarded as one for damages within the meaning of section 6 of the Small Causes Courts Act, notwithstanding questions of title might have to be inquired into incidentally. *Gurumugh Singh* v. *Ram Naryan*, 5 P.R. (1886).

Limitation Applicable to such Suits :—Where compensation money was paid by Government to a certain person representing himself as the owner of the land acquired, a suit by the real owner for the recovery of the same from that person should be brought within 6 years from the date of the payment of the amount to the defendant by the Government. *Azroal Singh* v. *Lalla Gopeenath*, 8 W.R. 23. In *Raja Kshettre Kristo Mitter* v. *Kumar Dinendra Narain Roy*, 3 C.W.N. 202 where the compensation money awarded by Government for land acquired had been withdrawn by a tenant representing himself the owner, *held*, that a suit by the landlord against the tenant for recovery of his share of the compensation money was governed by Art. 62 or 120 of the Limitation Act and not by Art. 36 and in *Rameswar Singh* v. *Secretary of State*, 34 Cal. 470: 5 C.L.J. 669: 11 C.W.N 356 it was held that Art. 17 of the Limitation Act has no application to a case where the amount of compensation has not been determined. It only applies to a case in which the Collector fails to pay or deposit in Court the amount awarded by him. Art. 18 also has no application as it applies to suits for non-completion of and refusal to complete the acquisition. The limitation provided by Proviso (a) sub-section (2) of section 18 of the Act is not intended to be an absolute limitation as to time. *Sreemutty Punnabati Dai* v. *Raja Padmanand Sing Bahadur*, 7 C.W.N. 538. Land had been taken under the L. A. Act, possession having been taken by the Collector before, and award was made. The Collector subsequently refused to give an award on the ground that the land belonged to Government. More than one year after the Collector's refusal to give an award, the present suit was instituted for a declaration that the land belonged to the plaintiffs and for recovery of possession, or, in the alternative, for damages for the wrongful refusal of the Collector to give the award. The finding was that the land was the plaintiffs' ; but the plea of limitation was raised : Held that the suit was not barred by limitation The land had vested absolutely in Government, and so plaintiffs were not entitled to recover possession but could only claim damages for breach of a statutory duty on the Collector's part. The suit contemplated by article 18 of the Limitation Act is one for compensation for non-completion, and that article does not apply to a case in which the land has vested in Government. Article 120,

therefore, governed the suit. *Muntharavadi Venkayya v. Secretary of State*, 27 Mad. 535.

Investment of money deposited in respect of lands belonging to persons incompetent to alienate.

32. *(1)* If any money shall be deposited in Court under sub-section (*2*) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

(*a*) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(*b*) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such money shall remain so deposited and invested until the same be applied—

(*i*) in the purchase of such other land as aforesaid; or

(*ii*) in payment to any person or persons becoming absolutely entitled thereto.

(*2*) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all

reasonable charges and expenses incident thereto, to be paid by the Collector, namely:—

(a) the costs of such investments as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

NOTES.

Jurisdiction of the L. A. Court under Section 32:— As the fund which is invested in the Government securities under sec. 32 of the L. A. Act, is in the custody of the special judge, he is competent to deal with the question of its application. He is competent to apply the fund in the purchase of other lands or in paying to a person who has become absolutely entitled thereto. Such authority, however, implies a power to make an enquiry. *Mrinalini* v. *Abinash,* 11 C.L.J. 533; *Kamini* v. *Promotha Nath,* 13 C.L.J. 597. When the land is converted into money and is in the custody of a special judge, he is the proper officer to determine whether any portion of the fund should be made over to the widow and for this purpose to investigate whether contingencies have happened which entitle the widow to make an absolute alienation of the fund. It is incumbent upon a Hindu widow in the first instance to establish that events have happened with entitled her to spend either in whole or in part the fund, invested in Government securities under sec. 32 of the L. A. Act and in the custody of the Court. When she has satisfied the Court that such events have happened, the burden shifts upon the reversioners. *Debendra Nath De* v. *Tulsi Moni Dasi,* 26 C.L.J. 123. That the money having been once deposited in Court, the Court was obliged to observe the provisions of Sec. 32 of the Act. *Nihal Kuar* v. *Secretary of State,* 13 I.C. 550. In the absence of evidence that the person whose land

is compulsorily acquired is only a limited owner, the full amount of compensation awarded should be paid to him or her and the Court would not be justified in proceeding under Sec. 32 of the L. A. Act. *Krishna Bai* v. *Secretary of State*, 42 All. 555: 18 A.L.J. 695: 57 I.C. 520.

Section 32 when Applicable :—The only case contemplated by the draughtsman (of the Section) was the case where the legal estate was in a person possessing only a limited interest while outstanding rights were in a beneficiary or reversioner who, upon the exhaustion of the limited estate, would become, in the words of the clause "absolutely entitled" to the land. Familiar instances of such possession are supplied by the case of a Hindu widow or a tenant-for-life. The provisions of section 32 cannot be made applicable to a case where the land compulsorily acquired is an unrecognised sub-division of a *narva* holding. *Assistant Collector of Kaira* v. *Vilhal Das*, 40 B. 254: 18 Bom. L.R. 1140: 33 I.C. 464. If the tarwad had power to alienate the land in respect of which the compensation had been awarded Section 32 did not apply. *Mahammad Ali* v. *Ahammadali*, 26 M. 287. A widow's estate was sold without any legal necessity and purchased bv the defendant. Subsequently the land was acquired under the L. A. Act and the defendant withdrew the compensation money. In a suit by the reversioner for a declaration that they were not bound by the sale to the defendant for a deposit of the money in Court for investment in Government securities, it was held that the defendant would be compelled to refund the money into Court for the purpose of investment and the Court has authority to give directions for the proper investment of the money in the interest of the reversioners in accordance with the rules of justice, equity and good conscience in the absence of any statutory power. Section 32 of the L. A. Act applies to Hindu widows who hold possession of property as limited owners. *Sheo Ratan* v. *Mohri*, 21 All. 354; *Sheo Prosad* v. *Jalcha*, 24 All. 189. Till the money passes into the hands of a person absolutely entitled thereto there is constructive re-conversion of it into land. Section 32 makes it reasonably clear that although an owner may be deprived of the land for the sake of public purposes the Legislature intended that the protection enjoyed by reversionary heirs when land is in the hands of limited owners should not by reason of the acquisition alone be completely withdrawn. *Nabin Kali* v. *Banalata*, 32 C. 921: 1 C.L.J. 103*n*; *Gobindarani* v. *Brinda Rani*, 35 C. 1104: 12 C.W.N. 1039; *Mrinalini Dassi* v. *Abinash Chandra Dutt*, 14 C.W.N. 1024.

Scope of Section 32 :—In *Re. Ganendra Mullick*, 25 C.W.N. 597: 67 I.C. 18, the question that arose was whether

"investment in the purchase of other lands" in Section 32, would include erection of buildings. Sec. 32 of the Land Acquisition Act provides that the Court shall order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held. The only question for consideration therefore was whether the erection of buildings would come within the word 'invested in the purchase of other lands' in Sec. 32 of the Act. The Court in delivering the judgment held "having regard to the definition of the expression land, we think that the words of Sec. 32 would include the erection of buildings upon the land and if the Court is satisfied that the money would be invested in the erection of buildings as proposed by the petitioners, we are of opinion that he is bound to pay the money over to the petitioners." Section 32 of the L. A. Act contemplates the application of the compensation money in the purchase of other lands. These lands when acquired, become additions to the estate of the full owner from whom the widow derives title. When a Hindu widow asks for an application of a portion of the fund to discharge a burden which has been imposed upon another portion of the estate of the husband of the lady it is not the investment of money in the purchase of other lands but the satisfaction of a charge imposed upon another portion of the estate which could never have been intended by the framers of Sec. 32 as an investment. *Debendra Nath De* v. *Tulsi Moni Dasi*, 26 C.L.J. 123. Under the provisions of Sec. 31 (1) of the L. A. Act, the L. A. Court can apply a portion of the compensation money to meet the costs of the proceedings by which the money came to be awarded to an administratrix having a limited power of alienation. A solicitor, who appears on behalf of an administratrix having limited powers in a L. A. proceeding, is entitled to his costs in connection with that matter and can also move the Court to make the payment out of the sum in deposit in Court for the administratrix, as the person from whom the sum is due. *Lalit Mohon De* v. *H. N. Dutta & Co.*, 65 I.C. 209.

Is the Order passed under Section 32 an Award :—In *Trinayani Dasi* v. *Krishna Lal De*, 39 C. 906: 17 C.W.N. 932n., the High Court observed that "it seems however that these cases previously came before another Bench of this Court on a rule issued under section 115 Civil Procedure Code. *Trinoyani Dasi* v. *Krishna Lal De*, 17 C.W.N. 935*n*. The point then considered was whether or not an order passed under section 32 of the L. A. Act *was part of an award* within the meaning of section 54, and the Court held that an order under section 32 was such a part of an award within the meaning of section 54, and that proper remedy for the petitioner in

that rule was by an appeal and not by an application for revision. We see no reason to differ from the view which was taken by the learned judges in that case, and we hold that the order under Section 32 of the Land Acquisition Act, must be taken to be an award or part of an award made under the Act.

Does a Suit lie to set aside an Order under Section 32:— In *T. B. Ramchandra Rao* v. *N. S. Ramchandra Rao*, 26 C.W.N. 713 (P.C.): 35 C.L.J. 545 under a deed of settlement executed by one R. one-half of certain properties was given to his adopted son and the remaining half was given to his two wives who were to take the same half and half. One of these properties having been acquired by Government a question arose under sec. 32 of Act I of 1894 between the adopted son and one of the wives, as to whether the latter was absolutely entitled to her share of the compensation money or whether the same was to be invested, she having no right to alienate her interest in the property under the deed of settlement. The High Court, when the matter came up before it, held, that by the deed of settlement the wife was intended to have a widow's estate only in the property devised. Subsequently, the wife having bequeathed her properties to respondent by Will, the representatives of the adopted son instituted a *suit* against the claimants under the Will alleging that she had a limited estate under the deed of settlement and had no power to dispose of the properties by Will. Their Lordships of the Judicial Committee of the Privy Council in delivering the judgment held that "there has, in the present case, been a clear decision upon the very point now in dispute which cannot be re-opened. The High Court appears only to have regarded the matter as concluded to the extent of the compensation money, but that is not the true view of what occurred, for as pointed out in *Barder Bee* v. *Habib Merican Noordin* L. R. 1909 A.C. 615, it is not competent for the court, in the case of the same question arising between the same parties to review a previous decision, no longer open to appeal given by another Court having jurisdiction to try the second case. If the decision was wrong it ought to have been appealed from in due time. Nor in such circumstances can the interested parties be heard to say that the value of the subject matter on which the former decision was pronounced was comparatively so trifling that it was not worth their while to appeal from it. If such a plea were admissible, there would be no finality in litigation. The importance of a judicial decision is not to be measured by the precuniary value of the particular item in dispute. It has been suggested that the decision was not in a former suit, but whether this were so or not makes no difference, for it has been recently pointed out by this Board in *Hook* v. *Administrator General of Bengal*, 48

Cal. 499: 25 C.W.N. 915 that the principle which prevents the same case being twice litigated is of general application, and is not limited by the specific words of the Code in this respect."

Debutter Land:—Land dedicated to an idol or to religious and charitable purposes is land belonging to the *Shebait* or trustee "who has no power to alienate the same" within the meaning of the provisions of Section 32 of the L. A. Act. Where a portion of the *debuttur* property was acquired under the L. A. Act, and the compensation was invested in approved securities, the *shebait* is entitled to withdraw a portion of the invested funds to effect necessary repairs to the remainder of the property, as under Section 32 of the Act the compensation money is placed in the custody of the Court, jurisdiction is by implication conferred upon it to deal with all questions that may arise as to the application of the funds in its custody. *Kaminee Debee* v. *Promotho Nath Mookherjee*, 39 C. 33: 13 C.L.J. 597; *Ram Prosonna Nundy* v. *Secretary of State*, 19 C.W.N. 653.

Whether an Appeal lies against an order under Sec. 32 and the Court-Fees payable on the Memorandum of Appeal:—In *Trinoyani Dasi* v. *Krishna Lal De*, 39 C. 906: 17 C.W.N. 932, the question was whether an appeal lay against an order passed under Section 32 and what was the correct stamp payable on the memorandum of appeal. The Court in deciding the points held, that these points "came up for consideration before a Bench of the Allahabad High Court in the case of *Sheo Rattan Rao* v. *Mohri*, 21 A. 354, and it was there held that *an appeal lay* against an order of the Land Acquisition Court refusing to pass an order under Section 32 of the Land Acquisition Act and the Court-fee payable would be *ad advalorem* fee. A similar view was taken by the High Court of Madras in the case of *Kasturi Chetty* v. *Deputy Collector, Bellary*, 21 M. 269. A certain *Debutter* property having been acquired under the L. A. Act the compensation allowed by the Collector was deposited in Court. One J. applied to withdraw the money on the ground that she was entitled to it as executrix to the will of her late husband. On objection by one K. that the money in deposit should be invested in Government securities and only the interest should be paid over to the shebait, the L. A. Judge passed an order under Sec. 32 of the Act directing the payment of the interest only to the applicant. Against this order T. preferred an appeal to the High Court on a court-fee stamp of Rs. 10/- only: *Held*, that the case came under the provisions of section 8 of the Court Fees Act and an *ad valorem* court-fee ought to have been paid; *Held* also that to bring a case under the provisions of Cl. VI of Art. 17 of Schedule II of the Court Fees Act, it must be established that it was not possible even to state approximately the money-value of the subject matter in dispute;

but where the claim to receive the full amount of compensation money was disallowed and the only relief allowed by the Court was to withdraw the interest on the said money, there it was possible to state approximately the money-value of the relief claimed and therefore in such a case the provision of Sch. II Art. 17 Cl. (b) of the Court-Fees Act would not apply. *Bunwari Lal* v. *Daya Sanker Misser,* 13 C.W.N. 815. Under section 54 of the L. A. Act there is no appeal against, an order of the District Judge allowing a Hindu widow to withdraw the compensation money deposited by the Collector under Sec. 31 of the L. A. Act. *Biswanath* v. *Bidhumukhi,* 19 C.W.N. 1290: 31 I.C. 677.

Investment of money deposited in other cases.

33. When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

NOTES.

Temporary Investment :—Section 33 deals with the investment of money deposited by the Collector under Section 31 (2) when the claimants did not consent to receive the compensation awarded by him under Section 11 or if there was any dispute as to the title to receive the compensation or as to the apportionment of it, whereas section 32 deals with as to how the money deposited by the Collector awarded by him in respect of land which did not belong to any person who had power to alienate the same, would be disposed of. The money is held in temporary deposit only pending the final decision of the dispute

between the parties and the Court has ultimately to make over the money to the party to whom it is adjudged to belong. If the parties want it, the money may be invested in Government and other securities, to avoid loss of interest pending final disposal of the case.

Payment of interest.

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

NOTES.

Duty of the Collector :—Under section 31, on making an award under Sec. 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by one or more of the contingencies mentioned in sub-section (2) of Section 31, in which case the Collector shall deposit the amount of compensation in Court. Therefore it follows that the payment, tender or deposit, shall in all cases follow the award and shall in all cases (except in cases of urgency under Sec. 17) be made before taking possession of the land acquired. Even when the Collector has deposited in Court or paid the amount of compensation, the claimant is entitled, as a matter of right, to interest at 6 per cent per annum on difference between the amount awarded and that offered by the Collector. *Rangasami Chetty* v. *Collector of Coimbatore,* 7 M.L.T. 78: 5 I.C. 744 ; *Ramsaran Das* v. *Collector of Lahore,* 9 P.W.R. 1911 : 9 I.C. 228.

PART VI.

Temporary Occupation of Land

Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.

35. (*1*) Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(*2*) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(*3*) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

NOTES.

"Part VI of the Act deals with occupation of land by the Government for *temporary* purposes as opposed to permanent acquisition by the Government under the preceding part of the Act under which the land "vested absolutely in the Government free from all other estates, rights, titles and interests." In the year 1861 it was found necessary to amend the Act (VI of 1857) on two points. Act II of 1861 provided for the case of an acquisition of land needed for the construction of "any road, canal or railway," and authority was given for the temporary occupation of adjacent lands not more than 100 yards, and in certain cases not more than two miles from the "centre line" of the same, for the purpose of taking earth or other materials for making or repairing the same, or for depositing earth etc. thereon, or for erecting temporary buildings or workshops or for the construction of temporary roads or railways. The full value of all "clay, stone, gravel, sand and other materials taken therefrom was to be given as agreed upon, or, in the event of any dispute, by an award, as in the case of a permanent acquisition."

"Part VI of the revised Bill, as of the present Act (X of 1870), concerning the temporary occupation of land permits a reference to the civil court as to the sufficiency of the Collector's compensation. The Government of Bombay and the North Western Provinces have asked that the reference may include a question as to the apportionment of the compensation. We have adopted this suggestion." *Para 10 of the Select Committee Report,* dated 23rd March, 1893.

Procedure for Temporary Occupation :—Part VI of the Act provides for temporary occupation of land. The procedure is much the same as in ordinary acquisition and generally the compensation, which is really the rent, will be settled by agreement. An order from the Local Government is sufficient without any declaration under sec. 6 and the time for which the land is compulsorily leased may not exceed three years. At the expiry of the time, compensation must be paid for any damage done to the land, and if it has been seriously damaged and the person interested in it desire this, it must be acquired permanently. Any dispute between the Collector and the person interested as to this or as to the rent to be paid must be referred by the Collector for the decision of the Court of his own motion.

Reference under Sec. 35 :—There are certain references which the Collector is bound to make of his own motion. These are

(1) References under Sec. 30.

(2) In the case of temporary occupation of land under Part VI of the Act where he and the person interested differ as to the compensation to be paid for the use of the land, the terms of the agreement, or the compensation to be paid when the period of occupation expires (Sec. 37).

(3) Where land under acquisition is alleged to be a part of a house, manufactory or building and the Collector disputes this (Sec. 49).

In these cases he must make a reference without any application from the parties. (*Peterson*).

Power to enter and take possession, and compensation on restoration.

36. (*1*) On payment of such compensation, or on executing such agreement or on making a reference under section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(*2*) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein :

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

NOTES.

When culturable land in the hands of tenants was acquired temporarily for the purpose of digging Kankar it was held that having regard to Sec. 36 of the L. A. Act, 1894, such portion of the compensation as might be awarded to the owner for the purpose of restoring the land to its original condition was not assessable *until after the term of occupation had expired.* In the circumstances of the case also this amount was not rightly assessed on the probable value of the *Kankar* which might hypothetically be extracted from the land. *Secretary of State* v. *Abdul Salem Khan,* 37 All. 347 : 30 I.C. 245.

Difference as to condition of land.

37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

Company may be authorised to enter and survey.

38. (*1*) * * * *[1]. The Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

(*2*) In every such case section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted; and section 5 shall be construed as if

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1 The words "Subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf," were omitted by s. 2 and sch. I of the Devolution Act, 1920 (38 of 1920).

after the words "the officer" the words "of the Company" were inserted.

NOTES.

Company:—The expression "Company" means a Company registered under the Indian Companies Act, 1882, or under the (English) Companies Act 1862 to 1890, or incorporated by an Act of Parliament or of the Governor-General in Council or by Royal Charter or Letters Patent; and includes a society registered under the Society Registration Act, 1860, and a registered Society within the meaning of the Co-operative Societies Act, 1912. Vide definition of "Company" in Sec. 3 (e).

This part of the Act takes the place of Act XXII of 1863 "a rather complicated measure of 53 sections, which had been hardly ever brought into practical effect." That Act "contained many conditions regarding the acquisition of land required for railway constructions by private persons or companies other than the guaranteed companies by which the existing railways had been made. There has been no case," said Mr. Strachey, when moving the Report of the Select Committee, "in which these particular provisions relating to railways had been put in force, nor was there any present probability of these being required, because no such Railways were under construction, nor were any such, he believed, contemplated." By this part of the Act land may be compulsorily acquired by Companies for works of public utility with the previous sanction of the Local Government; but such sanction is not to be given unless after enquiry, the Local Government is satisfied that the acquisition is necessary for the construction of works of public utility and the Company execute an agreement specifying, amongst other matters (enumerated in Sec. 41), the terms on which the public shall be entitled to use the work (*Beverley*). Before land can be acquired for a Company, the previous consent of the Local Government is required and the Company must also execute an agreement (Sec. 41). The Local Government before consenting, must hold a local enquiry (Sec. 40), in order to satisfy themselves that the land is required for the construction of some work that is likely to prove useful to the public. The terms of the agreement to be executed by the Company are detailed in Sec. 41. It must be published in the Gazette of India and the Local Gazette (Sec. 42). These provisions do not apply in the case of Railways or companies for whose works the Secretary of State for India in Council is bound by agreement to provide lands (Sec. 43).

Amendment of the Section:—By the passing of the Devolution Act XXXVIII of 1920 by the Governor-General of

India in Council the words "Subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf" in sub. Sec. (1) of Sec. 38 and in Sec. 41 have been omitted. The effect of the amendment is to remove the control of the Governor-General of India in Council over the Local Governments and to transfer to such Governments the powers exercised by the Governor-General in Council.

Previous consent of Local Government and execution of agreement necessary.

39. The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government, nor unless the Company shall have executed the agreement hereinafter mentioned.

NOTES.

This section provides that steps for acquisition for a Company will not be initiated unless and until the Local Government is satisfied as to the necessity of the acquisition for public purposes and the Company has executed an agreement as laid down in Sec. 41.

Previous enquiry.

40. (*1*) Such consent shall not be given unless the Local Government be satisfied, either on the report of the Collector under Section 5A, Sub-Section (2), or by an enquiry held as hereinafter provided,—

(*a*) that such acquisition is needed for the construction of some work, and

(*b*) that such work is likely to prove useful to the public.

(*2*) Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

(*3*) Such officer may summon and enforce the attendance of witnesses and compel the production

of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure[2] in the case of a Civil Court.

NOTES.

Scope of the Section :—The Section provides that no consent of the Local Government shall be given to the proposed acquisition unless the Local Government is satisfied by an enquiry that such acquisition is needed for the construction of some work and that such work is likely to prove useful to the public. The Hon'ble Mr. Bliss, in introducing the Bill, said: "It is not intended that the Act shall be used for the acquisition of land for any Company in which the public have a mere indirect interest, and of the works carried out by which the public can make no direct use. The Act cannot, therefore, be put in motion for the benefit of such a Company as a spinning or weaving company or an iron foundry, for although the works of such companies are distinctly "likely to prove useful to the public," it is not possible to predicate of them "the terms on which the public shall be entitled to use them," a condition precedent to the acquisition of land. It is important both that the public should understand that the Act will not be used in furtherance of private speculations, and that the Local Government should not be subjected to pressure which might sometimes be difficult to resist on behalf of enterprises in which the public have no interests."

Sub-Section (1) :—Section 40 as it originally stood constitutes the Government as the custodian of public interests, the sole judge of the two facts mentioned therein, namely, whether the land is required for the construction of some work, and secondly whether the work is likely to prove useful to the public. The Court was not competent to question the validity of the proceedings under Section 40 of the Act, neither it was open to the Court to discuss the sufficiency of the enquiry made by the Collector or his qualifications. The Local Government was the sole judge. In making an acquisition the wishes of the owner of the land were wholly irrelevant under the Act. There is no definition of a "public purpose" in the L. A. Act nor any limitation regarding what is likely to prove useful to the public: both matters were left to the absolute discretion of the Local Government and it was not competent for the Court to assume to itself the jurisdiction to impose restrictions on this

2 *See* now Act 5 of 1908, General Acts, Vol. VI.

discretion by holding, that an enquiry under Section 40 of the Act, the person whose land is intended to be acquired, should have an opportunity to appear and object, *Ezra* v. *Secretary of State*, 30 Cal. 36: 7 C.W.N. 249.

Change in Law by Amendment of the Section:—Section 40 (1) has been amended by insertion of the words "either on the report of the Collector under Section 5A, sub-Section (2) or" after the word "satisfied" by Act XXXVIII of 1923 and the effect of the amendment is that any person interested in any land which has been notified under Section (4) sub-Section (i) as being needed or likely to be needed for a public purpose or for a Company, may, within 30 days after the issue of the notification, object to the acquisition of the land or of any land in the locality. Every objection, so made, shall be made in writing and the Collector shall give the objector an opportunity of being heard and shall after hearing all such objections and after making such further enquiry as he thinks necessary, submit the case for the decision of the Local Government and the decision of the Local Government on the objections shall be final. In view of the amendments made by Act XXXVIII of 1923, the views expressed in *Ezra* v. *Secretary of State*, 7 C.W.N. 249: 9 C.W.N. 454 (P.C.) that "a declaration under Section 6 of the L. A. Act made with a view to acquiring land for a company is not to be considered void, merely because the previous enquiry held under Section 40 of the Act was conducted in the absence of the owner and without his knowledge" have to be modified.

Agreement with Secretary of State in Council.

41. If the Local Government is satisfied after considering the Report, if any, of the Collector under Section 5A, Sub-Section (2), or on the report of the officer making an enquiry under Section 40 that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, * * *[1] require the Company to enter into an agreement with the Secretary of State for India in

[1] The words "Subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf," were omitted by Sec. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

Council, providing to the satisfaction of the Local Government for the following matters, namely:—

(1) the payment to Government of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the Company;

(3) the terms on which the land shall be held by the Company;

(4) the time within which, and the conditions on which, the work shall be executed and maintained; and

(5) the terms on which the public shall be entitled to use the work.

NOTES.

Amendment:—Section 41 as it originally stood ran as follows:—"*Such officer shall report to the Local Government the result of the enquiry,* and if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, *subject to such rules as the Governor-General of India in Council may from time to time prescribe in that behalf,* require the Company to enter into an agreement with the Secretary of State for India in Council, providing to the satisfaction of the Local Government for the following matters, namely etc."

By section 10 of Act XXXVIII of 1923, the words "such officer shall report to the Local Government the result of the enquiry, and," have been omitted and after the word "satisfied" the following words have been inserted namely:—"after considering the report, if any, of the Collector under Section 5A, sub-Section (2), or on the report of the officer making an enquiry under Section 40." And by the Devolution Act XXXVIII of 1920 the words "subject to such rules as the Governor-General of India in Council may from time to time prescribe in that behalf" have been omitted.

From the changes introduced in the section by the Devolution Act XXXVIII of 1920 and by the Amending Act XXXVIII of 1923, it is incumbent both upon Collector or any other officer entrusted with the enquiry under Section 40, and

also of the Local Governments to consider the objections, if any, of the persons whose lands are acquired. Hence the view in *Ezra* v. *Secretary of State*, 7 C.W.N. 249 that Act I of 1894 is *sui generis* in its character and vests the Local Governments with absolute discretion in the matter of acquisition irrespective of any consideration of the willingness or unwillingness of the owner to part with his property, and that the owner's objections are limited to the amount of compensation and matters connected therewith etc. has to be modified.

Section 41 of the L. A. Act makes the Government the sole judge of the manner in which the public are to have the use of the land taken up. *Ezra* v. *Secretary of State*, 30 C. 36 : 7 C.W.N. 249. A Civil Court has no jurisdiction to entertain a suit for an injunction to restrain a District Municipality from acquiring through the medium of the Government under the L. A. Act, 1894, a plot of land for the purpose of widening a street way. *Shastri Ramchandra* v. *The Ahmedabad Municipality*, 2 Bom. L.R. 395.

Publication of agreement.

42. Every such agreement shall, as soon as may be after its execution, be published in the Gazette of India, and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

NOTES.

Publication of Agreement :—Under Section 42, the agreement made between Government and a Company must appear in the Gazette of India, as well as in the local official Gazette, before proceedings can be taken under Section 8 of the Act. Care should be taken that clear provisions are inserted in the agreement ensuring the re-imbursement to Government by the Company of all costs incurred by it as incidental to the acquisition and more specially of the costs of any litigation arising out of the proceedings either in the original or appellate Courts. *Board's Instructions* 7. *Bengal L. A. Manual, p.* 52. Publication of the agreement is necessary to notify to the public of the terms on which they may utilise the work.

Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies.

43. The provisions of sections 39 to 42, both inclusive, shall not apply, and the corresponding sections of the Land Acquisition Act, 1870,[1] shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, under any agreement between such Company and the Secretary of State for India in Council, the Government is, or was, bound to provide land.

NOTES.

There is a distinction between the cases in which the Government enters into an agreement to acquire land for a Company for public purposes and the cases in which the Government enters into an agreement to supply a company with lands for public purposes. In the latter cases the formalities mentioned in Sections 39, 40, 41, 42 have not to be gone through, and they are dispensed with and the Government may at once proceed to acquire the land in the usual way. "In Part VII of the Act (acquisition of land for companies) two sections have been added to except from the provisions applicable to ordinary companies those Companies for which, under contract with the Secretary of State, Government is expressly bound to provide land." *Para 11 of the Select Committee Report dated 2nd February, 1893.*

How agreement between Railway Company and Secretary of State may be proved.

44. In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

NOTES.

Vide Sections 37 & 81 of the Indian Evidence Act of 1872.

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1 Repealed by this Act.

PART VIII.

MISCELLANEOUS.

45. (*1*) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and in the case of any other notice, by or by order of the Collector or the Judge.

Service of notices.

(*2*) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(*3*) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on buisness, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired :

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the Indian Post Office

Act, 1866,[1] and service of it may be proved by the production of the addressee's receipt.

NOTES.

A notice under Section 45 of the L. A. Act should, whenever practicable, be served on the person named in the notice by delivering or tendering it. It is only when the person cannot be found that service may be made in another way. The mere temporary absence from his house of the person to be served would not fall within the expression "cannot be found" used in cl. (3) of the section, *Fazul Rasul* v. *Collector of Agra,* 17 A.L.J. 268: 50 I.C. 70. Service of a notice under Sec. 12(2) must be made, whenever practicable, on the person named in the notice and when such person cannot be found it must be served in the manner provided in Sec. 45, cl. (3) of the Act. An award was passed under Section 12 (1) of the L. A. Act. Notice required by section 12 (2) of the Act was served on the manager of an estate for which a receiver had been appointed and there was nothing to show that the receiver had authorised the manager to accept such notice on his behalf: Held, that the service was not valid and it was quoeried whether the provisions of the Civil Procedure Code relating to the service of summons apply to the service of notices under the L. A. Act by virtue of Sec. 53 of the Act. *Papamma Rao Garu* v. *Revenue Divisional Officer, Guntur,* 33 M.L.J. 472: (1917) M.W.N. 878: 42 I.C. 235.

"In Part VIII of the Act we have at the instance of the Lieutenant-Governor of Bengal, empowered collectors and judges to serve any notices under the Act by registered letter. We think it necessary, however, expressly to require that service can be proved only by production of the addressee's receipt." *Para 11 of the Select Committee's Report, dated 2nd February, 1893.*

Proof of Service :—The notice may be served either by registered post or by personal service. Personal service of notice or delivery of the notice to an agent would be good service or delivery to the principal, though in fact, the notice was destroyed by the agent and never seen or heard by the principal. It was an entire mistake to suppose that the addressee must sign the receipt for the registered letter himself or that he cannot do so by the hand of another person or that if another does sign

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[1] *See* now the Indian Post Office Act, 1898 (6 of 1898), General Acts, Vol. V.

it on the addressee's behalf the presumption is that it never was delivered to the addressee himself, mediately or immediately. In *Harihar Banerji* v. *Ram Shoshi Rai*, 23 C.W.N. 77 : 29 C.L.J. 117, the Privy Council, held, that "if a letter properly directed containing a notice is proved to have been put into the Post Office, it is presumed that the letter reached its destination according to the regular course of business and was received by the person to whom it was addressed. That presumption would apply with greater force to registered letters. "In *Girish Chandra Ghose* v. *Kishori Mohan Das*, 23 C.W.N. 319, a notice was given by registered post, but the letter containing the notice was returned by the Post Office the addressee having refused to accept it: *Held* that "under Sec. 114 of the Evidence Act, the Court was entitled to presume that the letter containing the notice reached the defendant and the fact that the letter was returned by the Post Office as not accepted by the addressee did not destroy the presumption."

Penalty for obstructing acquisition of land.

46. Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

Magistrate to enforce surrender.

47. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Completion of acquisition not compulsory, but compensation to be awarded when not completed.

48. (*1*) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(*2*) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(*3*) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

NOTES.

Power of withdrawal from Acquisition :—"Section 54 of the Act (X of 1870) gives to the Government or the public bodies whom it represents the power of withdrawal from land it has proposed to acquire. This power, however, must be exercised before the award is made. After award, withdrawal is prohibited, whatever may be the circumstances. Experience has shown that the only occasions on which powers of withdrawal would be really useful are when an award has shown that the Government was seriously misled by an under-estimate of the value of the land. A case has been reported in which a Municipality has been nearly ruined by being compelled to proceed with an acquisition in which the award was inordinately in excess of the original valuation. We think, therefore, that power to withdraw should be given after, as well as before, the award, but that, if so exercised, it should only be on terms of the most liberal compensation to the owner and that, if he is dissatisfied with the Collector's offer, he should have the same rights of reference to the Judge as in case of acquisition."

Para 12 of the Select Committee's Report, dated 2nd February, 1893.

"We have altered the terms of the first clause of Sec. 48, which gives certain powers to Government to withdraw from a contemplated acquisition of land so as to make it clear that *this withdrawal may be made at any time before possession is taken but not afterwards.* Instances were quoted in our Preliminary Report in which the Collector was proved by the Judge's award to have been seriously misled as to value of the land and in which the Government would not have acquired the land had it received a correct appraisement. We think that a Government which provides compensation from the taxes of the Empire should have larger powers of withdrawal than are given by the present Act, but we are of opinion that no such power should be given *after possession has once been taken* and that each Local Government must protect itself by executive instructions to Collectors to refrain from taking possession until after the award of the Judge, in every case in which there is a material difference between the Collector and the owner as to the value of the property." *Para. 11 of the Select Committee's Second Report, dated 23rd March 1893.*

Who can withdraw:—Where proceedings under the L. A. Act are taken on behalf of a Municipal Board the Board has no power to withdraw from the acquisition. It is the Government alone that can withdraw from the proceedings. *Secretary of State* v. *Quamar Ali,* 16 A.L.J. 669 : 51 I.C. 501.

If there is a contract between an acquiring body and the owner of the land acquired as to the price to be paid for the same there is no want of mutuality simply because by Sec. 48 Government is armed with the power of withdrawal, *Fort Press Company Ld.* v. *Municipal Corporation, City of Bombay,* 44 Bom. 797 : 58 I.C. 621 : 21 Bom. L.R. 1014.

Acquisition of part of house or building.

49. (*1*) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired:

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify

his expressed desire that the whole of such house, manufactory or building shall be so acquired :

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(*2*) If in the case of any claim under section 23, sub-section (*1*), *thirdly*, by a person interested, on account of the severing of the land to be acquired from his other land the Local Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(*3*) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the Local Government to the person interested, and shall thereafter proceed to make his award under section 11.

NOTES.

Section 55 of Act X of 1870 was exactly the same as the first part of the first sub-section of section 49 (Act I of 1894) but sub-sec. (1) of Section 49 of Act I of 1894 contains the following additional provision, viz.:—"Provided also that if any question......building," and corresponds to Section 92 of the Land Clauses Consolidation Act. The Select Committee in their report dated 25-1-94 says—"We are of openion that only such land should be deemed to be part of a house, manufactory, or building which it is proposed to take under the Act, *as can be held to be reasonably required for the full and unimpaired use of such house, manufactory or building.* We have, therefore, added a clause to section 49 (1) directing the Court to have regard to this question when deciding any reference which may be made to it under the Section." In *Khairati Lal* v. *Secretary of State,* 11 A. 378, the Government took some of the out-offices and some of the land in the appellant's compound for public purposes. The appellant had objected under Section 55 (of Act X of 1870) that the Government must take the whole or none. The Judge assessing the compensation came to the conclusion that the case did not fall within Section 55 of the Act. The High Court in delivering the judgment held that "we are perfectly satisfied that the correct interpretation of S. 55 is the same as the interpretation that has been put upon the corresponding Section 92 of the Land Clauses Consolidation Act, and that in this case, for instance, the appellant objecting, the Government could not take under the compulsory powers of the Act the out-offices or that portion of the compound which they did take unless they took the whole: that is to say, the house with its other out-offices and appurtenances and its compound, so far as the compound was the compound of the house. The convenience of the proprietor is not the test. The proprietor is entitled to stand upon his rights and say "you shall not apply your compulsory powers at all unless you take the whole of my house." In *Brook* v. *The Manchester, Sheffield and Lincolnshire Railway Co.,* L.R. 2 Ch. 571, Cotton L. J. said—"Although I do not at all think that we ought to construe the section liberally to favour the landowner, yet we ought to construe it reasonably and fairly, having regard, of course, to previous decisions and to this, that the object and intention of this Section was evidently to give a certain protection to landowners, to persons whose property has been taken away from them against their will, so that no person should be required to sell a fraction only of that which ought to be regarded as unit, when he might be very materially prejudiced by having left on his hands certain fractions only

of that unit, not capable of being used efficiently when one fraction of it has been taken away from it."

What are and what are not Parts of a Building, etc. —Godowns necessary as residence for servants are part and parcel of a building (within the meaning of Section 49 (1) of the L. A. Act) being a most important part of that building for the purpose of letting it out to gentlemen, as a place of residence. The acquisition of such godowns would thus be an acquisition of a part of a house contrary to the provisions of the Act. *Dalchand* v. *Secretary of State*, 43 C. 665 : 37 I.C. 11. Land which is not house, manufactory or building in the literal sense and which is not reasonably required for the full and unimpaired use of a house manufactory or building cannot be considered as part of the house, manufactory or building within the meaning of Section 49 of Act I of 1894. Whether or not the land is so reasonably required is a question of fact depending upon the particular circumstances of each case. *Nita Ram* v. *Secretary of State*, 30 All. 176. A well in a mill-compound supplying the engine with water by means of a pipe is a "part of the manufactory." *Khorshedji* v. *Secretary of State*, 5 Bom. H.C.R. 97 (O.C.). The word "house" is not confined to land covered by a building but also includes the court-yard of the house and so much of the land appurtenant to the house as is necessary for the convenient occupation of the house. *Nawab Mumtaz-ud-Dowla* v. *Secretary of State*, 9 O.C. 311.

Who can make the Application under Section 49 :— The word "owner" is not defined in the Act but an owner must be deemed to be one of the persons interested in the land being acquired (See Section 3 (b) of Act I of 1894). Reading Section 10 of the Act the proprietor, sub-proprietor, mortgagee, tenant or sub-tenant are all owners for the purposes of Section 49. An under-tenant is admittedly interested in the acquisition of the land, which for the purposes of Section 49, until the Civil Court finds otherwise, may be presumed to be part of his salt-godown. *Krishna Das* v. *Collector of Pabna*, 16 C.L.J. 165 : 16 C.W.N. 327.

Injurious affection by Severance :—Where a portion of a holding for residential purposes was acquired by Government and it was found that the remaining portion was thereby rendered useless for such purposes, held, that it was of very little importance whether the whole holding formed a "house" within Section 49 of the L. A. Act so as to render it obligatory on Government to acquire the whole of it in as much as compensation to the extent of the whole of the entire holding would have to be paid owing to damages caused by severance

and to the property being injuriously affected by acquisition. *Sarat Chandra Bose* v. *Secretary of State,* 10 C.W.N. 250. A decision by the Court under Section 49 would not prevent a claimant obtaining compensation under Section 23 Sub-Section (1) Cl. (3) of the Act. *Gibs Siddon* v. *Deputy Collector, Madras,* 17 I.C. 117.

Sanction of the Local Government necessary for Acquisition of the whole :—A part only of a certain piece of land was notified under the L. A. Act to be acquired by Railway under Cl. (1) of Section 49. The owners expressed a desire that the whole land should be taken and not a part. The Collector assented to the acquisition of the whole but did not consider it ecessary for Government to declare its intention for acquiring the whole. An award was made, objected to and the matter was referred to the Court. There, in addition to objection relating to the amount of compensation the owner alleged that the whole proceedings were illegal, *ultra vires* as there was no notification to acquire the whole land: Held (1) that the proceedings were illegal and *ultra vires,* (2) that the owners were not under any obligation to take the objection until the matter came before the Court and therefore there was no waiver. *Bhagwandas Nagindas* v. *Special L. A. Officer,* 17 Bom. L.R. 192: 28 I.C. 489.

Limitation for filing Petition of Reference under Section 49:—The first proviso to section 49 says that the owner may at any time *before the Collector has made his award,* withdraw his application, and it would follow that it was equally open to him to make a substantive application for a reference at *sometime before the award was actually made.* *Krishna Das* v. *Collector of Pabna,* 16 C.L.J. 165.

Collector refusing to refer under Section 49 :—In *Krishna Das* v. *Collector of Pabna,* 16 C.L.J. 165: 16 C.W.N. 327: 13 I.C. 470, the frontal land of a godown was acquired by the L. A. Deputy Collector and the petitioner alleged that the said land was necessary for the efficient working of his godown, and accordingly he prayed that a reference might be made to the Civil Court under Section 49 of the L. A. Act. He put in an application praying for a reference under Section 49 on the 21-9-10. The Deputy Collector thereupon held a local enquiry and rejected the petitioner's application on the 22-9-10, on the grounds that the acquisition of the land will not interfere with the business of the petitioner, if there be any and that the time for filing such petition had expired. The petitioner moved the High Court and obtained a Rule to set aside the order of the Deputy Collector dated 22-9-10. The first question that arose was whether L. A. Deputy Collector

was subject to the extraordinary jurisdiction of the High Court and the High Court in delivering the judgment held that—"We have been referred to the case of *Administrator General of Bengal* v. *The L. A. Deputy Collector, 24 Parganas,* 12 C.W.N. 241 and *British India Steam Navigation Co.* v. *Secretary of State for India,* 12 C.L.J. 505. In the present state of the law, we cannot do otherwise than follow the decision of Henderson and Mitra JJ. in the *Administrator General of Bengal* v. *The L. A. Collector.* It would obviously be unjust that the Deputy Collector should refuse to obey the provision of the Act, and to provide no remedy for the correction of the mistaken action. Where the law gives a right to a party to a certain procedure, it must also be deemed to give a remedy for the rectification of any irregularities committed in that connection. Section 49 of the Act clearly leaves no option to the Collector. It says "he shall refer the determination of such question (whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building) to the Civil Court. We entertain no doubt that we have jurisdiction to set right the error committed by the Deputy Collector in not making a reference under Section 49." The act of a L. A. Deputy Collector in making or refusing to make a reference to a Civil Court under Section 49 of the L. A. Act, is a Judicial Act, and the High Court can interfere with such act on the ground that the Deputy Collector is a Court when he takes such a step or refuses to take it. When an objection is made that a piece of land proposed to be acquired under the Land Acquisition Act is a part of the objector's house, the Deputy Collector must under Section 49 of the Act either acquire the whole house or refer the question to a Civil Court. He has no option in the matter. *Saraswati Pattack* v. *L. A. Deputy Collector of Champaran,* 2 P.L.J. 204: 39 I.C. 650.

Onus:—When a public body seeks under the L. A. Act to acquire any portion of a block of buildings which is structurally connected with the main block, the onus is on that body to show that the portion is not "reasonably required for the full and unimpaired use of the house." *Venkataratnam Naidu* v. *The Collector of Godavari,* 27 Mad. 350.

Is Decision under Sec. 49 an Award and Appealable :— A decision or determination under the L. A. Act which has no reference to compensation in some form or other is not an "award". An order under Section 49 of the L. A. Act is not an award and is not appealable under Section 54. *Sarat Chunder Ghose* v. *Secretary of State,* 46 C. 861: 23 C.W.N. 378, though it has been held in *Dalchand* v. *Secretary of State,* 43 C. 665, that an order of this nature has been dealt with in appeal on several occasions by the Allahabad High Court and by the

Madras High Court, and it has never been doubted that an appeal would lie. In *Giles Seddon* v. *Deputy Collector, Madras*, 17 I.C. 117, it has been held that the words "award" or "any part of the award" in Section 54 of the L. A. Act do not include the decision of the Court on a reference under Section 49. The decision of the Court on a reference under Section 49 is not appealable. No appeal lies against a decision of the District Judge, in a reference under the L. A. Act to the effect that the Government could take only that portion of the claimant's land which they desired to take and could not be forced to take the entirety of his holding. Such an order is a mere preliminary decision directing no compensation. *Mulraj Khatav* v. *The Collector of Poona*, 21 I.C. 179.

Acquisition of land at cost of a local authority or Company.

50. (*1*) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

(*2*) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

NOTES.

"To Section 50 we have added at the desire of the Government of Bombay a clause permitting the appearance before the Collector or the Court of the representative of a Local authority or company on whose behalf land is being acquired. We can not, however, agree that the authority should be permitted to appeal from the Collector's award. We have not given to Government itself power to make this appeal because the Collector is only the agent of Government in the acquisition of land ; his

action is taken under the rules laid down for his guidance which include a preliminary valuation and these rules ordinarily provide, and ought to provide, that when the Collector finds cause to anticipate that his eventual award will substantially exceed his provisional estimate he shall stay proceedings till he receives the further instructions of higher authority. No local authority or company is compelled to proceed under the Land Acquisition Act. If it can procure land more cheaply by private negotiation it is certainly at liberty to do so but if it elects to set in motion the very special powers given to Government for public objects it can expect no higher privileges and powers than those given to Government itself." *Para 13 of the Select Committee Report, dated 23rd March, 1893.*

Is Company a necessary Party:—A Company or Corporation for whose benefit any land may be acquired by the Collector is not a necessary party in the proceeding and there can be no doubt that no proceeding can properly go on in the absence of the Secretary of State for India in Council. Under Section 50 of the Act a Company or a Local Authority for whose benefit the acquisition is made may appear and adduce evidence for the purpose of determining the amount of compensation. But that is in the nature of the addition of a party simply for the purpose of watching the proceeding or assisting the Secretary of State. Such a Company or Local authority has not the power to ask for a reference under Sec. 18 of the Act neither does the Act give it the right of appeal, *The Municipal Corporation of Pabna* v. *Jogendra Narain Raikut,* 13 C.W.N. 116. Under section 50(2) the company concerned is entitled to appear in any proceeding before the Collector or Court and to adduce evidence "for the purpose of determining the amount of compensation." The reason of the provision is obvious, for the Company has to pay the compensation. *Ezra* v. *Secretary of State,* 30 Cal. 36: 7 C.W.N. 249.

Exemption from stamp-duty and fees.

51. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

NOTES.

Exemption from Stamp-Duty:—The Collector's award under sec. 11 has the effect of transferring the ownership of the land acquired from the owner to the Government free from incumbrances (Sec. 16). It is, therefore, in the nature of a

"conveyance" as defined by Sec. 2, Cl. (10) of the Indian Stamp Act and liable to a stamp-duty (Art 23, schedule I. A. of the Stamp Act). An agreement also is liable also to a stamp-duty of -/12/- as. under Art 5, Cl. (c) of schedule I. A. of the Stamp Act. By Sec. 51, the Legislature has exempted the award and the agreement from payment of any stamp-duty and no person claiming under such an award or agreement shall be liable to pay any fee for the copy of the same, that is, shall be entitled to get a copy of the same free of costs.

Agreement :—Agreements referred to in this section are those mentioned in sections 36, 41 and 43 of the Act, and they are not liable to stamp-duty.

Notice in case of suits for anything done in pursuance of Act.

52. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

NOTES.

When does a Suit lie ?—"If a person, or a body of persons having statutory authority for the construction of works, exceed or abuse the powers conferred by the Legislature, the remedy of a person injured in consequence is by action or suit and not by a proceeding for compensation under the statute which has been so transgressed. Powers of this sort are to be exercised with ordinary care and skill and with some regard to the property and rights of others. They are granted on the condition sometimes expressed and sometimes understood that the undertakers "shall do as little damage as possible in the exercise of their statutory powers." Lord Macnaghten in *Gaekwar Sirkar of Barode* v. *Gandhi Kachrabhai Kasturchand,* 7 C.W.N. 399. Where notice under sec. 9 of the L. A. Act does not contain the material facts which would enable the land-owner to indentify the land intended to be taken up and where the land to be acquired is affected with a franchise, the franchise is not described, and the notice fixes less than the prescribed time to prefer claims, these being irregularities, a suit for damages for permanent injury to a ferry caused by acquisition under the L. A. Act is maintainable in the Civil Court notwith-

standing an award has been made by the Deputy Collector not allowing any compensation for the ferry as it was not claimed even after a special notice. Sub-section 2 of Sec. 10 of the Railways Act does not bar a suit for compensation in the Civil Court, when the Collector refuses to adjudicate upon the claim put forward by the owner. A suit will lie in the civil Court in respect of claim for damages which could not be foreseen at the time of the proceedings, *Rameswar Sing* v. *Secretary of State*, 34 Cal. 470: 11 C.W.N. 356: 5 C.L.J. 669. Civil Courts are not powerless to afford relief to a person aggrieved by proceedings taken in the nominal compliance with the statutory provisions. It is, however, doubtful how far and in what precise mode such relief can be claimed by the Secretary of State or a Corporation for whose benefit proceedings have been taken by the Government under the L. A. Act. The expression "any person interested" in Sec. 18 does not include the Secretary of State, *B. I. S. N. Company* v. *Secretary of State*, 38 Cal. 230. It has been held in *Sreemutty Punnabati Dai* v. *Raja Padmanand Sing*, 7 C.W.N. 538, that as between the claimant *inter se* an award by the Collector under Sec. 11 of the L. A. Act does not amount to an adjudication of any question regarding the apportionment of compensation adjudged under the L. A. Act. Any such question can be determined by the Civil Court.

Where no Suit lies :—If a person who is interested in any land acquired under the L. A. Act has any objection to the measurement made by the Collector or to the amount of compensation made by him such person must obtain a reference to the Court of the Special Judge and cannot litigate the matter by a suit in the ordinary Courts. If the objection, however, relates to the person to whom compensation is payable or to its apportionment among the persons interested the matter may be investigated either upon a reference to the Court of the Special Judge, or having regard to the provisions of Sec. 31, cl. (2) by a suit in the ordinary courts. But although either of these two methods may be available, if he has made his choice and selected his remedy, he cannot, because he has failed in the course adopted, fall back upon the other. *Bhandi Sing* v. *Ramdhin Roy*, 2 C.L.J. 20n: 10 C.W.N. 991; *Jogesh Chandra Roy* v. *Secretary of State*, 29 C.L.J. 53.

Where no Notice necessary :—Sec. 52 of the L. A. Act refers to a *tortious* act done under that Act and no notice thereunder is necessary where no act has been done in pursuance thereof beyond the institution of the proceeding itself for acquiring the land. *Ezra* v. *Secretary of State*, 7 C.W.N. 249. And the Section is not applicable to proceedings commenced by an owner of property to restrain the Calcutta Corporation and Improvement Trust from taking further steps in some pending

land acquisition proceedings. *Manick Chand Mohata* v. *The Corporation of Calcutta and the Calcutta Improvement Trust.* 48 C. 916 : 66 I.C. 600.

Limitation for Suit :—A suit to recover compensation for land acquired, instituted on the refusal of the Collector to award any compensation under the L. A. Act is governed by Art. 120, Schedule II of the Limitation Act, the right to sue accruing either from the date of the acquisition or the refusal by the Collector to award compensation. *Rameswar Singh* v. *Secretary of State,* 34 Cal. 470 : 11 C.W.N. 356 : 5 C.L.J. 669. Land had been taken under the L. A. Act, possession having been taken by the Collector before an award was made. The Collector subsequently refused to give an award on the ground that the land belonged to the Government. More than one year after the Collector's refusal to give an award, a suit was instituted for a declaration that the land belonged to the plaintiff and for recovery of possession or in the alternative for damages for wrongful refusal of the Collector to give the award. The finding was that the land was the Plaintiff's ; but the plea of limitation was raised : *Held,* that the suit was not barred by limitation. The land had vested absolutely in Government and so plaintiffs were not entitled to recover possession but could only claim damages for breach of statutory duty on the Collector's part. The suit contemplated by Art. 18 Limitation Act is one for compensation for non-completion and that Art does not apply to a case in which the land has vested in the Government. Art. 120 governs the suit. *Mantharuvadi Venkayya* v. *Secretary of State,* 27 Mad. 535.

Code of Civil Procedure to apply to proceedings before Court.

53. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure[1] shall apply to all proceedings before the Court under this Act.

NOTES.

Civil Procedure shall apply to all Proceedings before the Court :—By the expression "Court" a Collector is not included. The whole of Part VIII of the Act in which this section appears, distinguishes between orders and proceedings by or before a Collector and those by or before a Judge or Court. There is no authority that gives to a Collector power to ad-

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[1] *See* now Act 5 of 1908, General Acts, Vol. VI.

minister oath or to require verifications under this Act. *Durga Das Rakhit* v. *Queen Empress*, 27 C. 820. This section makes the Code of Civil Procedure applicable only to the proceedings before the Court hearing the reference. In *Bansi Lal* v. *The Collector of Shaharanpur*, 4 A.W.N. 88, it was held that the procedure to be adopted, by a Civil Court where a reference is made to it, should, as far as possible, be the same as that adopted in trial of ordinary Civil suits, the "party interested" being treated as the plaintiff and the Collector as the defendant. Proceedings in Court under the Act have been almost entirely assimilated to those of ordinary Civil suits *Zamindar of Dhar* v. *Rana*, 53 P.R. 1906: 103 P.L.R. 1906.

Nature of Jurisdiction of L. A. Court :—The court of the Land Acquisition Judge is a court of special jurisdiction the powers and duties of which are defined by statute and it cannot be legitimately invited to exercise inherent powers and assume jurisdiction over matters not intended by the legislature to be comprehended within the scope of enquiry before it. It was never contemplated by the statute to authorise the Land Acquisition Judge to review the award of the Collector, to cancel it or to remit to him to be recast, modified or reduced. The Court of the L. A. Judge is restricted to an examination of the question which has been referred by the Collector for decision under Section 18, and the scope of the enquiry cannot be enlarged at the instance of parties who have not obtained or can not obtain any order of reference. *B. I. S. N. Co.* v. *Secretary of State*, 38 C. 230.

Save in so far as they may be Inconsistent with anything contained in the Act :—Under Part III of the L. A. Act the Special Land Acquisition Court has no jurisdiction to deal with objections except those which are made by persons who were parties to the proceedings before the Collector or who have since within six months applied to the Collector to make a supplementary reference in their case. The L. A. Act does not contemplate any decision by the special Court unless reference is made by the Collector. *Probal Chandra Mookerjee* v. *Raja Peary Mohon Mookerjee*, 12 C.W.N. 987. The addition of parties by the Civil Court, who have not been made parties to the reference by the Collector is wholly *inconsistent* with the L. A. Act, and therefore the Civil Court cannot add such parties to the L. A. proceedings before it, nor can it award any compensation to one who joined in the proceedings for the first time in the Court of the special Judge, without applying to the Collector for an order of reference. *Mohananda Roy* v. *Srish Chander Tewari*, 7 I.C. 10. The words "proceedings before the Court under the Act" in section 53 of Act I of 1894 exclude the applicability of the wide powers of appeal conferred on Courts

by the C. P. Code. Except for section 54 of the Act, no appeal shall lie from the decision of the L. A. Judge. Proceedings by way of execution can not be had to enforce an award under Act I of 1894, *Mulambath Kunhammad* v. *Acharath Parakat,* 31 M.L.J. 827 : 5 L.W. 472 : 38 I.C. 373, though an adjudication as to compensation or as to its apportionment is tantamount to a decree within the meaning of section 2 of the Civil Procedure Code, and is capable of execution, and the same is the case with a decree of the Appellate Court in appeal and the principle of restitution laid by sec. 583 of the C. P. Code (1882) is applicable. *Zamindar of Dhar* v. *Rana,* 53 P.R. 1906 : 1903 P.L.R. 1906.

Order IX, r. 13, Applies :—Section 103 of the C. P. C. (1882) corresponding to Order IX, r, 13 of the C. P. C. of 1908 applies to a reference under section 30 of the L. A. Act, the party at whose instance the reference was obtained occupying the position of the Plaintiff and his opponents that of the defendants. *Ezra* v. *Secretary of State,* 7 C.W.N. 249 : 30 C. 36 ; *Kishen Chand* v. *Joganath Persad,* 25 All. 133. Where the pleader engaged by the former could not attend owing to his wife's illness, and another gentleman who had agreed to take up the case as his substitute was unavoidably prevented from attending the Court, and there being three cases on the day's list above the case the party himself did not anticipate that the case would be called at an early hour and so failed to be present with his witnesses at the time when the case was called, *held* that these facts combined made out a case of "sufficient cause" for the readmission of the case but subject to conditions. The case was restored on condition of the defaulting party paying beforehand to his opponents the costs of the hearing in the day on which the case was dismissed, the subsequent cost of the application under Section 103 C. P. C. and the costs of the appeal before the High Court, *Behary Lal Sur* v. *Nanda Lal Goswami,* 11 C.W.N. 430. When, after a reference has been made to the Civil Court, the proceedings were dismissed for want of prosecution without any adjudication on the merits, a suit is not maintainable for the trial of the question involved in the reference ; but the party who seeks to have such question tried must get the proceedings revived in accordance with law. *Bhandi Singh* v. *Ramadhin Rai,* 2 C.L.J. 359 : 10 C.W.N. 991.

Order of Discovery under Order XI, r. 12. C. P. C. :— An order for discovery can be made in a case under the Land Acquisition Act under Order XI r. 12 C. P. C. *Kishen Chand* v. *Jagannath Prosad,* 25 All. 133. When, however, the right to discovery in any form depends upon the determination of any issue or question in dispute in a matter, or it is desirable that some issue or question of law or fact or mixed question of law

and fact in dispute should be determined first, the question of discovery may be reserved till after the issue or question has been determined. *Whyte* v. *Ahrens*, 26 Ch.D. 717. The High Court is not powerless to set matters right when an *interlocutory* order has been made without jurisdiction or under such circumstances as are likely to cause irreparable injury to one of the litigants. *B. I. S. N. Co.* v. *Secretary of State*, 38 C. 230: 15 C.W.N. 87: 12 C.L.J. 505.

The Court may call for Records :—The power to call for records under Order XIII r. 10 C. P. C. is a power which is undoubtedly inherent in the Judge of a Land Acquisition Court. *Nores Chandra Bose* v. *Hiralal Bose*, 43 C. 239.

Injunction under Order XXXIX, r. 1. C. P. C.:—The owner of land sought to be acquired cannot obtain an injunction merely because there has been a defective description of the land in the notice under Section 9. Where damages will adequately compensate for the injury, injunction will be refused *Rameswar Singh* v. *Secretary of State*, 34 C. 470: 11 C.W.N. 356: 5 C.L.J. 669.

Review under Order XLVII, r. 1. C. P. C. :—A L. A. Court has power to review an award passed by it under the provisions of the L. A. Act. Such power is derived from the language of section 53, wherein the words "proceedings before the Court under the Act," are comprehensive enough to include review proceedings under Sec. 114 C. P. C.—A distinction, should, however, be drawn between the power of a Court to alter its own order (review) and the power of another Court to alter it (appeal) and the one might legitimately be viewed as "proceedings before the Court within the meaning of Section 53 of Act I of 1894, though not the other. Per Srinivasa Aiyangar J—"the decision of a L. A. Court whatever may be its nature, whether passed on a reference under Section 18 of the L. A. Act or under Sections 30 or 32, whether the dispute was between the Government and the party interested or only between the parties interested *inter se* is an award. An award of a Court cannot be changed by it on review unless the power is expressly conferred by Statute and the words "proceedings before the Court under the Act" in Section 53 of the L. A. Act exclude the applicability to it of the provisions of the C. P. Code relating to review, though in cases where an award is made without hearing a party interested and without giving him an opportunity of being heard, the Court may have the power even apart from Order IX to change or modify the award after hearing the party interested." *Mulambath Kunhammad* v. *Acharath Parakat*, 31 M.L.J. 827: 5 L.W. 472: 38 I.C. 373. There is nothing in the L. A. Act which forbids the application of order XLVII of the Code of Civil Procedure to proceedings under the Act,

Sakti Narain Singh v. *Bir Singh*, 2 U.P.L.R. (Pat.) 50 : 1 P.L.T. 219 : 5 P.L.J. 253 : 58 I.C. 510.

Appeals in proceedings before Court.

[2][**54.** Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to His Majesty in Council subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908 and in Order XLV thereof.]

NOTES.

Remedy by Appeal and not by Suit :—A Court constituted under Act I of 1894 comes within the meaning of the High Courts Act, Section 15, that is, is a court subject to the appellate jurisdiction of the High Court. *Collector of 24 Pargannas* v. *Sayed Abdul Ali*, 23 W.R. 239. Upon the construction of the Act, a decision of the Court, is not appealable, and if there is an appeal, the decision of the appellate Court is final and not liable to be contested by a suit. *Nilmony Sing Deo* v. *Ram Bandhu Roy*, 4 Cal. 758.

Amendment :—The section, as it originally stood, was—"Subject to the provisions of the Code of Civil Procedure, applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or any part of the award of the Court in any proceedings under this Act." By section 3 of the Land Acquisition (Amendment) Act XIX of 1921 the old section has been substituted by the section as set forth above. It should also be noted in this connection that by section 2 of the said Act XIX of 1921, section 26 of the L. A. Act I of 1894 has been re-numbered 26 (1), and to the said

[2] This section was substituted for the original section 54 by s. 3 of the Land Acquisition (Amendment) Act, 1921 (19 of 1921).

section the following sub-section has been added, namely "(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, Cl. (2), and section 2, Cl. (9) respectively of the Civil Procedure Code, 1908."

Reasons for the Amendment :—Under section 39 of the old Act X of 1870 when the amount of compensation had been settled by the court and there was any dispute as to the apportionment thereof, or when a reference had been made under section 38 the Judge sitting alone had to decide the proportions in which the persons interested were entitled to share in such amount. An appeal lay from such decision to the High Court unless the Judge whose decision was appealed from was not the District Judge, in which case the appeal lay in the first instance to the District Judge and a second appeal lay to the High Court from the judgment passed in an appeal against the decision of the Court to which the dispute was referred. *Atri Bai* v. *Arnopoorno Bai*, 9 Cal. 838 : 12 C.L.R. 409. "It is true, by section 39 of Act X of 1870, it was provided that appeal would lie to the High Court unless the Judge whose decision was appealed from was not the District Judge, in which case the appeal lay in the first instance to the District Judge ; but that Act has been repealed by Act I of 1894 and Section 54 of the said Act enacted : "Subject to the provisions of the Code of Civil Procedure, applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or any part of the award of the court in any proceedings under this Act and under that section the appeals lie to the High Court." *Balaram Bhramartar Roy* v. *Shyam Sunder Narendra*, 23 Cal. 526. In 1912, their Lordships of the Judicial Committee of the Privy Council in the *Rangoon Botatoung Company Ld.* v. *The Collector of Rangoon*, 40 C. 21 : 16 C.L.J. 245 : 16 C.W.N. 961, held that "As Lord Bramwell observed in the case of the *Sandback Charity Trustees* v. *The North Staffordshire Railway Company*, (1877) L.R. 3 Q.B.D. 1 ; 'An appeal does not exist in the nature of things. A right of appeal from any decision of any tribunal must be given by express enactment.' A special and limited appeal is given by the Land Acquisition Act from the award of "the Court" to the High Court. No further right of appeal is given. Nor can any such right be implied. The learned Counsel for the appellants relied both on section 53 and Section 54 of the Act. Section 53 enacts that save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under the Act. That enactment applies to an earlier stage in the proceedings and seems to have nothing to do with an appeal from the High

Court. Section 54 is in the following terms:—54. Subject to the provisions of the Code of Civil Procedure applicable to appeal from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceedings under the Act. That Section seems to carry the appellants no further. It only applies to proceedings in the course of an appeal to the High Court. Its force is exhausted when the appeal to the High Court is heard. Their Lordships can not accept the argument or suggestion that when once the claimant is admitted to the High Court, he has all the rights of an ordinary suitor, including the right to carry an award made in an arbitration as to the value of the land taken for public purposes up to this Board as if it were a decree of the High Court made in the course of its ordinary jurisdiction." In the case of *The Special Officer Salsette Building Sites* v. *Dassabhai Bezonji Motivalla*, 37 B. 506: 17 C.W.N. 421, which immediality followed the case of *Rangoon Botatoung Co.* v. *The Collector of Rangoon* it was held, that "An appeal does not lie to His Majesty's Privy Council from the decision of the High Court in appeal under Section 54 of the Land Acquisition Act (1 of 1894)."

To remove the bar to the appeal to the Privy Council from the decision of the High Courts in cases in which the value of the claim is Rs. 10,000 or upwards, Act XIX of 1921 was passed which enacted that the awards in Land Acquisition cases by the Courts will be decrees and the grounds of the awards will be considered as judgments within the meaning of Section 2 Sub-Section (2) and Section (2) Sub-Section (9) respectively of the Civil Procedure Code, 1908, and Section 96 of the Civil Procedure Code provides that "an appeal shall lie from every decree passed by any Court exercising Original Jurisdiction to the Court authorised to hear appeals from the decisions of such Court." An award is a "decree or order of a Civil Court." *Manavikraman Tirumalpad* v. *Collector of the Nilgiris*, 41 M. 943. An appeal lies under the law as amended in 1921 to the Privy Council from a decree of the High Court passed on appeal from a reference under the L. A. Act as from a decree in ordinary suit. *Lala Narsingdas* v. *Secretary of State*, 29 C.W.N. 822.

Privy Council Practice:—In accordance with the practices of the Judicial Committee in appeals involving the valuation of property in India their Lordships will entertain an appeal under Act XIX of 1921 (L. A. Amendment Act) Section 2, as to the value of the property compulsorily acquired only upon questions of principle, including errors in appreciating or applying the rules of evidence or the judicial methods of weighing evidence, *Narsingh Das* v. *Secretary of State*, 6 L. 69: L.R.

52. I.A. 133; *Nowroji Rustomji Wadia* v. *Government of Bombay* 49, B. 700: 30 C.W.N. 386 (P.C.). But the Privy Council in such cases will not interfere with the judgments of the Courts in India as to matters involving valuation of property and similar questions where knowledge of the circumstances and of the District may have an important bearing on the conclusion reached unless there is something to show not merely that, on the balance of evidence it would be possible to reach a different conclusion but that the judgment cannot be supported as it stands, either by reason of the wrong application of principle or because some important point in the evidence has been overlooked or misapplied. *Lala Narsingdas* v. *Secretary of State*, 29 C.W.N. 822.

Appeals are subject to the Provisions of the Code of Civil Procedure:—Section 98 of the Civil Procedure Code, 1908, applies to Land Acquisition appeals and if a Bench of judges hearing an appeal differ as to the amount of additional compensation awardable, the proper order to pass on the appeal is to confirm the award of the Lower Court under that section and not to give a decree up to the lower limit of additional compensation. *Kishen Doyal* v. *Irshad Ali*, 22 C.L.J. 525, distinguished, *Manavikraman Tirumalpad* v. *Collector of the Nilgiris*, 41 M. 943. Section 54 of the L. A. Act makes no departure from the ordinary rule of the Civil Procedure Code which allows a party to appeal not only against the whole decree but also against parts of it. *Deputy Collector, Madura* v. *Muthirula Mudali*, 35 M.L.J. 83: (1918) M.L.J. 458: 24 M.L.T. 83: 8 L.W. 271: 48 I.C. 1003. Where a number of separate references under the L. A. Act are heard together and disposed of by one judgment and where distinct appeals are filed from this judgment it is absolutely essential under Or. 41, r. 1 of the C. P. C. that a copy of the Award should accompany each memorandum of Appeal and the appellate Court has no power to dispense with such copy. *Mabarak Ali Shah* v. *Secretary of State*, (1925) A.I.R. (L.) 438; *Nurdin* v. *Secretary of State*, 97 I.C. 187. In *Rangoon Botatoung Co.* v. *The Collector of Rangoon*, 40 Cal. 21, their Lordships point out that appeals from awards as provided for in Section 54 of the L. A. Act are governed as to their procedure from the date of the filing of the appeal to its disposal by the Rules provided for in the Civil Procedure Code. The procedure laid down in the C. P. Code with reference to appeals from Original decrees governs appeals under Section 54 of the L. A. Act. *Ramasami Pillai* v. *Deputy Collector Madura*, 43 Mad. 51.

Leave for Appeal to Privy Council:—Whether a particular order is a "final order" within the meaning of Section 109 of the Civil Procedure Code, 1908, for the purpose

of granting leave to His Majesty in Council must depend upon its nature and contents and its relation to the proceedings in which it has been made. As a general rule an order cannot be rightly considered final which settles a part only of several issues of law and facts ; in other words if the order decides a question the solution of which cannot, whatever view may be taken of it, terminate the proceedings before the Court, it cannot appropriately be called a final order. An order of the High Court which dealt with the question of the propriety of an order of a L. A. Judge for discovery is not a final order within Section 39 of the Letters Patent or Section 109 of the C. P. C. An order of the High Court holding that the L. A. Judge could not review at the instance of the Secretary of State the award of the Collector in so far as it was not challenged by the claimants, the objections of the claimants to the award still remaining to be determined by the Judge, was not an order within Section 39 of the Letters Patent or Section 109 of the C. P. C. *Secretary of State* v. *B. I. S. N. Company*, 15 C.W.N. 848 : 13 C.L.J. 90.

Does no Appeal under Section 54 lie until after Apportionment :—In *Ardeshir Manchorji Kharadi* v. *Assistant Collector, Poona*, 10 Bom. L.R. 517, Chandavarkar J. had held that no appeal lies from an award which merely determines the amount of gross sum payable as compensation, as priliminary to the further question, to whom the amount so determined should be paid. Following the above case, it has been lately held by the Lahore High Court in *Deo Karan Das* v. *Secretary of State*, 94 I.C. 249 : (1926) A.I.R. (L) 442 that until the District Judge had decided the question as to apportionment there was no final award which could be appealed against. This view altogether ignores that the L. A. Act provides for two classes of references to the Judge, one to assess compensation under Part III and the other for apportionment under Part IV of the Act, *Taylor* v. *Collector of Purnea*, 14 C. 423. In *Ram Chandra Rao* v. *Ramchandra Rao*, 35 C.L.J. 545 : 26 C.W.N. 713 (P.C.), their Lordships of the Judicial committee have distinctly held that the L. A. Act contemplated *two properly separate and distinct* forms of procedure, one for fixing the amount of compensation described as being an award (an appeal from that award or any part of that award is given to the High Court under Section 54 of the Act) ; and the other, for determining in case of dispute the relative rights of the persons entitled to the compensation money. When once the amount as to the award has become *final*, all questions as to fixing of compensation are then at an end ; and the duty of the Collector in case of disputes as to the relative rights of the persons together entitled to the money is to place the money

under the control of the Court and the parties then can proceed to litigate in the ordinary way to determine what their right and title may be. A separate notice of the apportionment proceedings is requisite to bind any person by these proceedings and where such a notice has not been served, any party interested although served with notice of the proceedings for settling the amount of compensation, cannot be considered a party to the proceedings for apportioning it, *Hermutjan Bibi* v. *Padmalochan Das*, 12 C. 33. In case of an appeal against an award of the court, fixing the amount of compensation the only person who can be impleaded is the Secretary of State, *Fakir Chand* v. *The Municipal Committee of Hazro*, 18 I.C. 37, and in case of appeals against an award of apportionment the claimants themselves are impleaded as appellant or respdondents and the Secretary of State is not at all a necessary party to the same. Hence the view that no appeal lies against an award of valuation until an award for apportionment has been made is hardly consistent with law, practice or procedure.

Appeal against an order of Investment under Section 32 :—Properties set apart for charities are *prima facie* inalienable ; and when such properties are acquired under the L. A. Act, the award made thereunder may direct the investment of the compensation money in Government securities. An appeal lies against the award in so far as it directs investment under Section 54 of the L. A. Act ; *Shiva Rao* v. *Nagappa*, 29 M. 117 ; *Trinayani* v. *Krishna*, 6 I.C. 157.

Appeal against an Order for Refund :—An order made by a Court in a proceeding under the L. A. Act directing a party to whom a sum of money awarded as compensation under the Act had been paid under a previous order, to refund the money is not an award or portion of an award within the meaning of Section 54 of the Act nor does it come under any of the Orders mentioned in Section 588, (now Section 104 and Or. 43 R. 1) of the Civil Procedure Code. No appeal therefore lies from such an order, *Nobin Kali* v. *Bonalata*, 32 Cal. 921. An order made by a Court in a proceeding under the L. A. Act directing a party to whom a sum of money awarded as compensation under the Act has been paid under a previous order to refund the money is not an award or a portion of an award within the meaning of Section 54 of the Act and is, therefore, not appealable. Such an order will, however, be set aside in revision without jurisdiction. *Gohor Sultan* v. *Ali Muhammad*, 63 I.C. 1 : 3 L.L.J. 421.

Appeal against an Order refusing to restore a case by setting aside an Exparte Decree :—An order of the Special L. A. Judge refusing to restore a claim case by setting

aside a decree passed *exparte* for default of the claimant, was held not to be an "award" and did not come under Section 54 of the L. A. Act, and an appeal was, therefore, held not to lie against such an order. *Hasun Mulla* v. *Tasiruddin*, 39 C. 393 : 15 I.C. 925.

Appeal against an Order refusing to add Party :— Section 54 of the L. A. Act deals with orders made between parties to the proceedings before the District Judge. Hence an order rejecting an application by a person to be made a party on the ground that he had no *locus standi* is not appealable. *Golap Khan* v. *Bholanath Marick*, 12 C.L.J. 545 : 7 I.C. 481.

Appeal against Order for Costs :—Under Section 25, an award of costs is a part of the award and is appealable as such under Section 54 of the Act. Section 27 does not authorise the Court to allow any amount for pleader's fee at its discretion. When the subject-matter is capable of being valued, pleader's fee must be allowed in the Scale laid down in Civil Rules of Practice or on such other scale as may be in force for the particular Court. *Ekambera Grammany* v. *Muniswami Grammany*, 31 M. 328.

Court-Fees in Appeal :—A certain Debutter property having been acquired under the L. A. Act the compensation allowed by the collector was deposited in Court. One T. applied to withdraw the money on the ground that she was entitled to it as executrix to the will of her late husband. On objection by one K. that the money in deposit should be invested in Government securities and only the interest to be paid over to the shebait, the L. A. Judge passed an order under Section 32 of the Act directing the payment of the interest only to the applicant. Against this order T preferred an appeal to the High Court on a Court-fee stamp of Rs. 10/- only : Held, that the case came under the provisions of Section 8 of the Court-Fees Act and an *ad valorem* Court-Fee ought to have been paid. *Bunwari Lal* v. *Daya Sankar*, 13 C.W.N. 815 ; *Sheoratan Roy* v. *Mohri*, 21 All. 354 ; *Kasturi Chetti* v. *Deputy Collector of Bellary*, 21 Mad. 269 ; *Trinoyani Dasi* v. *Krishna Lal De*, 39 C. 906 : 17 C.W.N. 933 ; *Mangaldas Girdhardas Parekh* v. *The Assistant Collector of Prantij Prant, Ahmedabad*, 45 B. 277. Under Section 8 of the Court-Fees Act the amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the *difference* between the amount awarded and the amount claimed by the appellant ; *Secretary of State* v. *Baswa Singh*, 19 P.W.R. 1913 : 17 I.C. 764 where it has also been held that an appeal by the Secretary of State against the award of the court requires a court fee

stamp of Rs. 10/- only under Art. 17 (4) Sch. II. of the Act. This view was not accepted as correct in the *Secretary of State for India in Council* v. *K. S. Banerjee*, 97 I.C. 140, where Walmsley J. says that the Court-Fees Act makes it clear that a claimant must pay *ad valorem* fees but the wording of the Section that makes that provision suggests that when the Secretary of State appeals for a reduction of the sum awarded some other rule applies, and if the court-fees payable by a claimant are not governed by the ordinary rules affecting decrees, it seems that they cannot be applicable in the case of an appeal by the Secretary of State. If that is so the only Article in the Court-Fees Act under which such an appeal can be classed, though not very appropriately, is Art. 12 (4), an appeal to set aside. I think, however, that the position has been changed by the recent amendment of the Land Acquisition Act. For a purpose unconnected with Court-fees, the decision of the Judge has been made a decree, and the result is that the Secy. of State is appealing against a decree. Where a claimant demands an enhancement of the Judge's award he also is appealing against a decree *and the special provision* of S. 8 of the Court-fees Act may now, probably, be regarded as redundant. At any rate the inference drawn from the discremination made between the claimant and the Secretary of State is no longer warranted."

Limitation for Appeals under Section 54 :—There is no special period of limitation provided for in the L.A. Act nor is there any allusion unless it be by implication to the Limitation Act. Art. 156 of the Limitation Act provides a period 90 days for "appeal under the Code of Civil Procedure 1908, to a High Court except in the cases provided for by Art 151 and Art 153, the time to run from the date of decree or order appealed from." Appeals under the Code of Civil Procedure in Art 156 of the Limitation Act mean appeals, the procedure in respect of which is governed by the Civil Procedure Code. Art. 156 applies to appeals provided by Sec. 54 of the L. A. Act. *Ramasami Pillai* v. *Deputy Collector of Madura*, 43 Mad 51 : 39 M.L.J : 110 : 26 M.L.T. 136 : 10 L.W. 206 : (1919) M.W.N. 565 : 53 I.C. 405.

Parties in Appeal :—In an appeal in the case of Land Acquisition award the only person who can be impleaded as a respondent is the Secretary of State and if he is not made a respondent when the appeal is filed there is in fact and in law no respondent at all so far as the respondent is concerned. An appeal omits the name of the person who alone can be the respondent to such appeal. *Fakir Chand* v. *The Municipal Committee of Hazro*, 18 I.C. 37.

Duty of the Appellant :—It is the duty of the appellant to satisfy the Court of Appeal that the decision of the trial Court

is erroneous. *Fakrunissa* v. *Izarus* 25 C.W.N. 866: 35 C.L.J. 116 (P.C.); *Nobokishore* v. *Upendra Kishore* 26 C.W.N. 322: 35 C.L.J. 116 (P.C.); *Secretary of State* v. *Bejoy Kumar Addy,* 40 C.L.J. 303.

Power to make rules.

55. (*1*) The Local Government shall * * *[3] have power to make rules[4] consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made:

[1][Provided that where the provisions of this Act are put in force for the acquisition of land—

(*a*) for the purposes of any railway, or

(*b*) for such other purposes, connected with the administration of a central subject as defined in section 54-A of the Government of India Act, as the Governor General in Council may, by notification in the Gazette of India, declare in this behalf,

the power to make, alter and add to rules conferred on the Local Government by this sub-section shall be exercised subject to the control of the Governor General in Council.]

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[3] The words "subject to the control of the Governor General in Council" inserted by the Decentralization Act, 1914 were omitted by s. 2 and sch. I of the Devolution Act, 1920 (38 of 1920).

[4] For rules under this section for—

(*1*) Ajmer-Merwara, *see* Ajmere Local Rules and Orders;
(*2*) Bengal, *see* Ben. Stat. R. and O.;
(*3*) Bihar and Orissa, *see* B. and O. Local Rules and Orders;
(*4*) Central Provinces, *see* Central Provinces Local Rules and Orders;
(*5*) United Provinces of Agra and Oudh, *see* U. P. Local Rules and Orders.

[1] This proviso was added by S. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

(2) The power to make, alter and add to rules under sub-section (1) shall be subject to the condition of the rules being made, altered or added to after previous publication.

(3) All such rules, alterations and additions shall, * * *[2] be published in the official Gazette and shall thereupon have the force of law.

NOTES.

Amendment:—By sec. 2 Sch. I of the Devolution Act XXXVIII of 1920, the words "subject to the control of the Governor General in Council" in sub Sec. (1) of Sec. 55 have been omitted and to the same sub-section the following proviso has been added, namely:—

"Provided that where the provisions of this Act are put in force for the acquisition of land:—

(a) for the purposes of any railway; or

(b) for such other purposes, connected with the administration of a central subject as defined in Section 45 A of the Government of India Act, as the Governor General-in-Council may by notification in the Gazette of India declare in this behalf,

the power to make, alter and add to rules conferred on the Local Government by this sub-section shall be exercised subject to the control of the Governor General in Council."

Rules under Sec. 55 of the L. A. Act: may be framed by the Local Government in furtherance of the provisions of the Act and in order to enable the officers of the Government who are not judicial officers better to carry out the requirements of the Law, and the rules framed by the Board of Revenue are not *ultra vires*; *Ezra* v. *Secy. of State*, 30 Cal. 36: 7 C.W.N. 249. But the Rules framed under the proviso to Sub-sec (1) added by the Devolution Act (XXXVIII of 1920) require that the rules framed by the Local Government must be subject to the control of the Governor-General-in-Council. The Rules must be published in the Official Gazette and shall have thereupon the force of law.

Non-Observance of the Rules:—Certain lands were acquired by Government for a railway company and subsequent-

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2 The words "when sanctioned by the Governor General in Council," were omitted by Sch. Pt. I of the Decentralization Act, 1914 (4 of 1914), General Acts, Vol. VIII.

ly found not to be required for the purpose. The lands so relinquished were sold by the Tahasildar without public auction ; Held, that the Tahasildar had power to sell the lands under the order of the Collector and the non-observance of the rules as to sale of lands by public auction did not vitiate the sale by the Tahasildar in the absence of any fraud, misrepresentation or mistake. *Karapuraterak Ram Rama Kurup* v. *Ryra Kurup* 20 L.W. 608 : 35 M.L.T. 122 : (1924) A.I.R. (M) 911.

PART II.

THE LAND ACQUISITION (MINES) ACT, XVIII OF 1885.

CONTENTS.

SECTIONS.

THE

LAND ACQUISITION (MINES) ACT.

(ACT NO. XVIII OF 1885).*

PASSED BY THE GOVERNOR-GENERAL IN COUNCIL

(Received the assent of the Governor-General on the 16th October 1885).

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.†

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870;‡ It is hereby enacted as follows :—

NOTES.

Objects and Reasons :—"The object of this Bill is to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act (1870).

2. Act XXII of 1863, which was replaced by the Land Acquisition Act, 1870, contained specific provisions (Sections 51 and 52) for cases in which mines and minerals lay under land taken up under that Act. These provisions were not however, re-enacted in the Act of 1870, which, as the Government is

* This Act has been declared in force in the Santhal Parganas by the Santhtl Parganas Settlement Regulation (III of 1872), S. 3, as amended by the Santhal Parganas Justice and Laws Regulation, III of 1899, S. 3 in Angul and the Khondmals, see the Schedule to the Angul District Regulation, 1894 (I of 1894).

† See now the Land Acquisition Act, I of 1894.

advised, contemplates the acquisition of the underlying minerals as well as the surface of the land.

3. Hitherto this state of the law has caused no inconvenience. Now, however, owing to its being proposed to extend railways across districts where there is a certain amount of coal to be found, notice has been drawn to the inconvenience of the existing law which practically compels the Government either to purchase all the mines and minerals under the land over which it is proposed to construct a line or to abandon the undertaking altogether.

4. Under these circumstances, the present Bill has been prepared. It does not, however, simply re-enact the provisions which Act XXII of 1863 formerly contained, in as much as they do not appear to be adapted to the circumstances of the case. It follows, rather, the rules contained in the English Railway Clauses Consolidation Act, 1845 (8 & 9 Vic. C. 20, Ss. 77 *et seq.*), which it extends to the acquisition of land for all purposes and not merely for the construction of railways.

5. It provides, first, (Sec. 2) that when a declaration is made by the Local Government under Sec. 6 of the L. A. Act, the Local Government may, if it thinks fit, insert in the declaration a statement that any mines and minerals lying under the land to be acquired are not needed, and that if any such statement is inserted in the declaration, the mines and minerals lying under the land shall not, when the Collector takes possession under Section 16 or Section 17 of the Act, vest in the Government.

6. It then (Section 3) declares that if the owner, lessee or occupier of any mines or minerals lying under any land so acquired is desirous of working the same, he shall give the Local Government notice in writing of his intention so to do 30 days before the commencement of working.

7. Next (Section 4) the Bill empowers the Local Government to cause the mines and minerals to be inspected by a person appointed for the purpose.

8. If it appears (Section 5) to the Local Government that the working of the mines and minerals is likely to cause damage to the surface of the land or any works thereon, the Local Government may at any time before the expiration of 30 days from the receipt of the notice, offer either—

(*a*) to pay compensation for the mines or minerals to the owner, lessee or occupier ;

(*b*) to pay compensation to the owner, lessee or occupier of the mines or minerals in consideration of his working or getting them in such manner and sub-

ject to such restrictions, as the Local Government may in its order, specify.

If the offer mentioned in case (a) is made, then the owner, lessee or occupier is prohibited from working the mines or minerals, whilst if the offer mentioned in case (b) is made,. then he may not work or get the mines or minerals, save in the manner and subject to the restrictions specified by the Local Government.

9. The Bill next provides (Section 6) for the manner in which the amount of compensation to be paid under Section 5 is to be determined.

10. Should, however, the Local Government not offer to pay any compensation, Section 7 permits the owner, lessee or occupier of the mines and minerals to work the mines in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area in which the same are situate. Should any damage or obstruction be caused by the improper working of the mines, the section provides for the repairing of the damage or the removal of the obstruction by or at the cost of the owner, lessee or occupier.

11. Sections 8 and 9 provide for the inspection of mines for the purpose of ascertaining whether they are being worked or have been worked so as to damage the land which has been acquired, and Section 10 declares that if any mines, have been improperly worked, the Local Government may require the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary for making safe the land acquired and preventing injury thereto.

12. Lastly, Section 11 makes the provision of Section 3 to 10 applicable to cases where the land acquired has been transferred to a company, and Section 12 defines what the term Company as used in the Bill means". *Statement of objects and Reasons dated 24-2-85.*

Land Acquisition Act 1870 :—By passing of the L. A. Act of 1894 the L. A. Act X of 1870 has been repealed and all the references in this (L. A. Mines) Act to the L. A. Act of 1870 should be read to refer to the Land Acquisition Act I of 1894 or to the corresponding portion thereof (*vide* Sec. 2, cl. (3) of the L. A. Act I of 1894).

Short title commencement and Local extent.

1. (*1*) This Act may be called the Land Acquisition (Mines) Act, 1885; and

(2) It shall come into force at once.

(3) It extends in the first instance to the territories administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal, but any other Local Government may, from time to time, by notification in the Official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

NOTES.

Extent of the Act :—"Some of the Local Governments have objected to the Bill being applied to the provinces under their administration on the ground that, having regard to the manner in which the right to minerals is regulated in those provinces, it is unnecessary there, and that, if unnecessary it would only prove an encumbrance and complication in the acquisition of lands. To meet these objections we have made the measure applicable by its own vigour only to the territories under the administration of the Governor of Madras in Council and the Lieutenant-Governor of Bengal, but have empowered the remaining Local Governments to extend it to the whole or any part of the territories administered by them if they think fit." *Para 2 of the Report of the Select Committee dated 23rd September, 1885.*

This Act has been declared to be in force in Sonthal Pargannas by the Sonthal Pargannas Settlement Regulation (III of 1872), Sec. 3 being amended by Sonthal Parganna Justice and Laws Regulation (III of 1899) Sec. 3. In Angul and the Khandmals, see the Schedule to the Angul District Regulation. In 1885 it was in force in the territories under the administration of the Lieutenant-Governor of Bengal *i.e.* in Bengal, Behar and Orissa, now under the separate administration of the Governor of Bengal and the Governor of Behar and Orissa. It is in force in the Presidency of Madras, but has not been extended to the Presidency of Bombay. Vide *L. A. Manual, Bombay Government Gazette, 1918 pp. 105.*

Saving for mineral rights of the Government.

2. Except as expressly provided by this Act, nothing in this Act shall affect the right of the Government to any mines or minerals.

NOTES.

Object of the Section:—"An apprehension has been expressed in some of the opinions received that the Bill might by implication affect the rights which the Crown has to all minerals throughout a very large portion of the country. Such an apprehension is, we believe, unfounded, but by way of greater precaution and to present misapprehension we have inserted a Section (2) saving the right of the Crown." *Report of the Select Committee dated 23-9-1885.*

Right of the Crown to Mines or Minerals:—The English in India started with the assumption that "all the soil belonged in absolute property to the sovereign, and that all private property in land existed by his sufferance" Main's "Village Communities" 7th Edition, 1913 p. 104. This was the doctrine of Abu Haneefa, and accorded with the English theory that "the *proprietor* or actual ownership of the land always resided "in the Sovereign." *Stephen's Blackstone*, Book II. p 1, Ch. II (Ed. 1890, Vol. I, p. 175). The existence of private property in land which is the fundamental doctrine of Hindu jurisprudence and which even the Mahomedan Government in India did not put out of sight, was entirely ignored. With this idea, the Government in 1793 transferred in perpetuity a vast and then unmeasured, quantity of land to a class of men who were known to be *Zemindars,* and the property in the soil was formally declared to be vested in them in the following terms. "To effect these improvements in agriculture, which must necessarily be followed by the increase of every article of produce, has accordingly been one of the primary objects to which the attention of the British administration has been directed in its arrangement for the internal government of these provinces. As being the two fundamental measures essential to the attainment of it *the property in the soil has been declared to be vested* in the landholders, and the revenue payable to Government from each estate has been fixed for ever," *Preamble to Reg. II of 1793.* The remaining quantity of land, cultivated or waste continued to be the property of the State. *Land laws of Bengal by S. C. Mitra 2nd Edition p. 30.* A proclamation was issued on the 22nd March 1793, by which the Governor-General in Council declared with the concurrence of the Court of Directors, that the *Zemindars* "independent *Talukdars* and other actual "proprietors" of land, with whom the Decennial Settlement had been concluded would be allowed to hold their estates at the same assessment for ever," *Reg. I of 1793. Sec. 5.* The Privy Council in the case of *The Mayor of the City of Lyons* v. *The Hon. East India Co.*, 1 M.I.A. 175, (281) has said that "if reference be made to the prerogative of the English Crown, that prerogative in other particulars is of as high a nature, being given for

the same purposes of protecting the state, and it is not contended that these branches are extended to Bengal. Mines of precious metals, treasure-trove, royal fish, are all vested in the Crown, for the purpose of maintaining its power and enabling it to defend the state. They are not enjoyed by the Sovereign in all or even in most countries, and no one has said that they extend to the East Indian possession of the British Crown."

It would therefore, appear that in Bengal, Behar and Orissa, the property in the soil vested in the landholders by Regulation II of 1793, and in Madras by Regulation XXV of 1802. The Regulations abovenamed are in force throughout the provinces of Bengal, Behar and Orissa and in the Presidency of Madras except the Scheduled Districts (Act XV of 1874). For this reason the Hon'ble Member in charge of the Bill in introducing the Bill in the Council, said that though at one time it was "supposed that all the minerals in India were the property of the state" it was now well accepted "that the State is not ordinarily the owner of minerals in permanently settled estates."

In Bombay :—"The right of Government to mines and mineral products in all unalienated land is and is hereby declared to be expressly reserved. Provided that nothing in this section shall be deemed to affect any subsisting rights of any occupant of such land in respect of such mine or mineral products." Sec. 69 of the Bombay Land Revenue Code (Act V of 1870).

In C. P. :—Unless it is otherwise expressly provided in the records of a settlement or by the terms of a grant made by Government the right to all mines, minerals, coal and quarries shall be deemed to belong to Government and the Government shall have all powers necessary for the proper enjoyment of such rights: provided that, whenever in the exercise by the Government of the rights herein referred to over any land the rights of any persons are infringed by the occupation or disturbance of the surface of such land the Government shall pay to such persons compensation for such infringement, and the amount of such compensation shall be determined as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1870. Sec. 151 of The Central Provinces Land Revenue Act XVIII of 1881.

In Ajmere :—"Except in the case of lands in respect of which *istimrari* Sanads have been granted by the Chief Commissioner with the previous sanction of the Governor-General in Council the Government shall be presumed until the contrary is proved to be the sole owner of all mines, opened and unopened, of metal, coal and other valuable minerals with full liberty to search for and work the same." Sec. 3, The Ajmere Land and Revenue Regulation II of 1877.

In the Punjab:—"Mines of metal or coal and gold washings shall in every case be deemed to be property of Government but if Government works or causes to be worked any such mines, compensation for damages to the surface of the soil shall be made to such surface. Such compensation may be claimed and shall be ascertained and awarded in accordance with the provisions of Act X of 1870" Sec. 29, The Punjab Land Revenue Act, XXXIII of 1871.

Property in Mines:—The ownership in the *mines under land* may be severed from the ownership of the surface; and the mines so severed are a separate tenement capable of being held for the same estates as other hereditaments and with like incidental rights of ownership. The severance may be effected by conveyance or by Act of Parliament. In the absence of evidence the severance may be inferred from a long and continuous course of enjoyment of the mines by persons other than the owners of the surface. Although the mines may thus be a separate tenement, yet *prima facie* the owner of the surface of land is entitled *ex jure naturæ* to all beneath it, except mines of gold and silver (Mines of Gold and Silver are royal mines, and are vested in the Crown). For the law affecting royal mines, see Halsbury's Laws of England Vol. VII pp. 116—118, under the title "Constitutional Law." And it is inmaterial that the owner has only a title acquired by acts of ownership on the surface. If an estate in fee simple in land is acquired by enlargement of a long term, the estate thus acquired includes the mines if not already severed at the time the enlargement is made. Proof of ownership of the mines under any parcel of land does not raise any presumption or afford any evidence regarding ownership of surface. Halsbury's Laws of England, Vol. XX pp. 506 and 507.

Mines:—The word "mine" is used in various senses. It denotes an under-ground excavation made for the purpose of getting minerals and also a stratum or vein, or aggregations of strata or veins of minerals, whether opened or unopened, and whether within the property of one surface-owner or of several.

It is also used to denote the cubical space occupied or formerly occupied by minerals. Halsbury Vol. XX pp. 501.

The word "lands" in the Lands Clauses Act, 1845, includes mines. The word "mine" has been defined in Section 3 (4) of the Indian Mines Act VIII of 1901, as to include every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any mine or for searching for or probing minerals, and all the shafts, levels, planes, works, machinery tramways and sidings both below ground and above ground in and adjacent to and belonging to the mines; but it does not include any pit, quarry or

other excavation the depth of no part of which measured from the level of the adjacent ground exceeds twenty feet and no part of which extends beneath the superjacent ground."

Minerals :—In the most general sense of the term, minerals are those parts of the earth which are capable of being got from underneath the surface for the purpose of profit. The term therefore, includes coal, metal ores of all kinds, stone, slate, and coprolites, but not the common clay, sand or gravel found in the upper soil. A mine is a work for the excavation of minerals by means of pits, shafts, levels, funnels, etc. as opposed to a quarry, where the whole excavation is open. While unsevered, minerals form part of the land, and as such are real estate. When severed, they become personal chattels. Royal mines are mines of gold and silver, and belong to the Crown, in whosesoever land they may be found. In other cases mines and minerals belong *prima facie* to the owner of the surface of the land, though they may be and frequently are, held by different persons. It follows from the nature of copyhold tenure that the minerals under copyhold land belongs to the lord, though he cannot work them without the tenants, consents, except by a local custom. In many places customs or prescriptions exist, by virtue of which persons are entitled to work mines in land, the free-hold of which is vested in another person.

By modern statutes, numerous obligations have been imposed on mine-owners for the protection of the public and of persons employed in mines. The principal Acts now in force in England are as regards coal mines, and, as regards mines generally the Metalliferous Mines Regulation Acts, 1872 and 1875, the Quarries Act, 1894, The Mines (Prohibition of Child Labur Underground) Act, 1900, and the Mines Accidents (Rescue and Aid) Act 1910. The right to work minerals under Railways, canals, waterworks and highways is restricted by the Acts relating to these matters. *Byrne's Dictionary of English Law p. 580.*

Declaration that mines are not needed.

3. (*1*) When the Local Government makes a declaration under section 6‡ of the Land Acquisition Act, 1870, that land is needed for a public purpose or for a company it may, if it thinks fit, insert in the declaration a statement that the mines of coal,

‡ See now S 6 of the Land Acquisition Act, 1894 (I of 1894).

iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.

(2) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6 of the land Acquisition Act, 1870,‡ and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11 of the said Land Acquisition Act in respect of the mines, and may—

(a) when he makes an award under section 14* of that Act, insert such a statement in his award;

(b) when he makes a reference to the Court under section 15* of that Act, insert such a statement in his reference; or

(c) when he takes possession of the land under Section 17* of that Act, publish such a statement in such manner as the Local Government may, from time to time prescribe.

(3) If any such statement is inserted in the declaration, award or reference, or published as aforesaid, the mines of coal iron-stone, slate or

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* See now sections 11, 14 and 17 respectively of Act I of 1894.

other minerals under the land or portion of the land specified in the statement except as aforesaid shall not vest in the Government when the land so vests under the said Act.

NOTES.

Amendment of the Section :—By Section 2 of the Devolution Act XXXVIII of 1820, the Land Acquisition (Mines) Act, 1885, has been amended in the manner following that is to say "In clause (c) of Section 3 (2) for the words "Governor-General in Council" the words "Local Government" have been substituted.

This was Section 2 of the Bill.

"Section 2 of the Bill as introduced required the Government to determine, before it issued declaration under Section 7 of the Land Acquisition Act, whether the land should be acquired simply under that Act, that is to say, including the minerals or whether the special provisions of the Bill should be put in force with a view to excluding the minerals from the acquisition. It has been represented that it is not for the interest of any of those concerned that an irrevocable determination should necessarily be come to on so important a point at a stage of the proceedings when the circumstances of the case would in all probability be imperfectly known. The Government, it will be observed on reference to the Land Acquisition Act, has a discretion to withdraw from a proposed acquisition of land up to a considerably later stage, and it seems but reasonable that it should have a discretion to exclude the minerals from the acquisition at any time up to the same stage if it turn out that their acquisition is not essential to the undertaking and that either the owners are unwilling to part with them or the Government or the Local authority or Company concerned is unwilling to pay their full value. We have accordingly (in Section 3) empowered the Collector, who in such a matter would, of course, act under the control of the Government, to exclude the minerals from the acquisition at any time up to the stage of the proceedings at which the land vests, and it is no longer in the discretion of the Government to recede from the transaction." *Para 4 of the Report of Select Committee, dated 23rd September, 1885.*

Declaration in Case of Mines :—In England if it is intended to purchase or take minerals for the purpose of the undertaking, this intention should be specifically stated in the notice to treat. In ordinary cases, the sub-sec. is not required in order to carry out a parliamentary undertaking, and in the case of railway and waterworks companies, minerals are specially excepted from an ordinary purchase unless they are included in express terms. There is without doubt powers to include minerals in a notice to treat, if they are required by the promoters. *Errington* v. *Metropolitan District Rail Co.* (1883), 19 Ch. D. 559.

The section provides that the declaration should contain a statement that only surface land is needed and that mines are not needed. In the absence of any such statement in the Declaration what is to be presumed is that the land including the mines underneath is be acquired. If, however, from the circumstances of the case, it appears to the Collector that the mines are not needed, or "are not essential to the undertaking and that either the owner is unwilling to part with them or the Government or the Local authority or Company concerned is unwilling to pay their full value," the section empowers the collector to exclude the minerals under the provisions of the Act *i. e.* under conditions mentioned in Section 5, 6, 7 from the acquisition *at any time up to the stage of the proceeding at which the land vests,* i. e. before taking possession under Section 16 of the L. A. Act I of 1894, and by Section 3(2) (a) (b) (c) the Collector is empowered to insert the statement that the mines of coal, iron-stone, slate, or other minerals lying under the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed either (1) in the award or (2) in the reference to the Court when making reference to Court under section 18 of the L. A. Act and *thirdly* to publish such statement, when in urgent cases he takes possession of the land under Section 17, in such manner as the Local Government may, from time to time prescribe.

The Effect of Statement by the Collector :—The effect of the statement of any such intention viz. :—"that the mines of coal, iron-stone, slate, or other minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed" either in the declaration by the Government or in the award or reference of the publication of such statement by the Collector in such manner as the Local Government prescribes in that behalf before taking possession under Section 17, is that the mines of coal, iron-stone, slate or other minerals under the land or

portions of the land specified in the statement do not vest in the Government at all.

Jurisdiction of the Collector under the L. A. (Mines) Act XVIII of 1885 :—The Collector under the L. A. Act I of 1894 has limited jurisdiction. He is bound by the official declaration in the Local Official Gazette. The Collector can not acquire or give possession of any land beyond the boundaries given in the declaration. If the Local Government committed a mistake the Collector can not cure the mistake. *Harish Chundra Neogi* v. *Secretary of State*, 11 C.W.N. 875. Whereas under the L. A. (Mines) Act, XVIII of 1885, the Collectors are empowered to exclude the acquisition of the mines or minerals under certain circumstances though there may not be a statement to that effect in the declaration.

Notice to be given before working mines lying under land.

4. If the person for the time being immediately entitled to work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the Local Government notice in writing of his intention so to do sixty days before the commencement of working.

NOTES.

Persons entitled to work Mines :—At first there was a great controversy as to whether a holder of a permanent tenure or a *Digwari* tenure in a putni possesses all the underground rights including mineral rights and the Courts in India had all along held that the holder of a permanent tenure or a Digwari tenure and a putnidar possesses all the underground rights including mining rights *unless there is an express reservation to the contrary,* and it was also held that the holder of a permanent tenure such as Digwari Tenure or putni possesses all kinds of rights attaching in the lands from the centre of the earth to the sky, *unless there is an express reservation restraining the enjoyment of a specified right. Sriram Chakravarti* v. *Hari Narain Singh* 3 C.L.J. 59 ; *Brojo Nath Bose* v. *Raja Sri Sri Doorga Pershad Singh,* 34, C. 753 ; 12 C.W.N. 195 : 5 C.L.J. 583 ; *Rameswar Malia* v. *Ram Nath Bhattacharjee,* 3 C.L.J. 103 ; *Nawab Sir Ali Quader Hossin* v. *Rai Jogendra Nath Roy,* 16 C.L.J. 7. It has also been held that a contract to sell or grant lease of land will also generally include the entire solum

from the surface down to the centre of the earth and will therefore include mines, quarries or minerals. An owner in fee-simple possesses in all freehold lands an unrestricted right to work the mines in his estate and his conveyance in the absence of any indication to the contrary, grants all mines and minerals therein. *Meghlal Pandey* v. *Raj Kumar Thacoor*, 34 C. 350: 11 C.W.N. 527: 5 C.L.J. 208.

The Views of the Privy Council:—Their Lordships of the Judical Committee, on the other hand, have heid in *Kumar Hari Narain Singh* v. *Sitaram Chakravarti*, 37 C. 723: 14 C.W.N. 741 : 11 C.L.J. 653 (in appeal from *Sitaram Chakarvarti* v. *Hari Narain Singh* 3 C.L.J. 59) that when the title of the zemindar to a village as part of his Zemindary before the creation of the permanent tenancy, is established, he must be presumed to be the owner of the underground rights thereto appertaining *in the absence of the evidence that he ever parted with them* and in *Doorga proshad Singh* v. *Brojo Nath Bose*, 39 C. 695: 15 C.L.J. 461: 16 C.W.N. 482 (P.C.) (in appeal from *Brojo Nath Bose* v. *Raja Sri Sri Doorga proshad Singh* 5 C.L.J. 583) their Lordships held that the mineral rights remained in the Zemindar *in the absence of proof* that the said rights vested in the Digwar before the time of permanent settlement if the said Mouzas were then held on Digawari tenure, or *that the Zemindar ever parted with the mineral rights.* Their Lordships, in *Raj Kumar Thacoor* v. *Megh Lal Pandey*, 45 C. 87: 22 C.W.N. 201: 26 C.L.J. 584 (in appeal from *Megh Lal Pandey* v. *Raj Kumar Tacoor*, 34 C. 358: 11 C.W.N. 587: 5 C.L.J. 208) have held that "where the proprietor of a zemindari executed a permanent heritable and thransferable mokurari pottah at a fixed rent of a small portion of a village within its ambit "with all rights (*mai hak hakuk*) appertaining to my Zemindari and giving the makuraridar power to cut down and fell trees, the mineral rights remained in the Zemindar." In *Raghunath Rai Marwari* v. *Raja Doorga Proshad Singh*, 47 C. 75: 23 C.W.N. 94: 30 C.L.J. 160, their Lordships had further to impress upon the High Courts in India that the grant by a Zemindar of a tenure of lands in his Zemindari although the tenure may be permanent, heritable and transferable, whether at a fixed rent or rent-free, as for instance, "revenue-free," Bramhottar will not include the rights to the minerals in the land unless it clearly appears by the terms of the grant that such a right was intended to be conveyed. In *the Secretary of State for India in Council* v. *Srinivasa Chariar* 48 I.A. 56: 44M. 421: 25 C.W.N. 818: 33 C.L.J. 280, their Lordships had to repeat that an Inam-grant may be no more than an assignment of revenue and even when it is or includes a grant of land what interest in the land passess must depend on the

language of the instrument and the circumstances of the case. Without apt words such a grant does not pass the right to minerals. In *Satya Narain Chakravarti* v. *Ram Lal Kaviraj* 29 C.W.N. 725, Lord Dunedin, in delivering the Judgment of the Board, observed that "there have been a series of cases before this Board in which their Lordships have held, in the case of leases of mokurari and other tenures, that, in order to pass minerals to the lessees, *express words must be needed. Sashi Bhusan Misra* v. *Raja Jyoti Prosad Singh Deo,* 44 C. 585: 21 C.W.N. 377: 25 C.L.J. 265 (P.C.).

The Law as it is :—Since the expression of the above views by the Privy Council there appears to be a change in the view of the High Courts in India, for instance, in *F. F. Christian* v. *Tekaitni Narbada,* 20 C.L.J. 527: 12 C.W.N. 796: 27 I.C. 471 it was held that "where a deed was one for maintenance for the life of the grantee and *did not contain any express provision authorising the grantee to open new mines and to appropriate the minerals therefrom the grantee had no right to grant a mining lease for the purpose of opening and working new mines.*" See also *Nawagarh Coal Co. Ld.* v. *Behari Lal Trigunait,* 20 C.W.N. 113 (Pat.) and *Satya Niranjan Chakravartty* v. *Sushilabala Dassi,* 4 Pat. 799: (1926) A.I.R. (Pat.) 103.

Notice to work Mines :—This is taken from section 78 of the Railway Clauses Consolidation Act, 1845. It has been seen that by Section 3 the Collector is empowered under certain circumstances to exclude the minerals from acquisition and to acquire only surface land in which case the mines do not vest in the Government and there is nothing to prevent the "owners, occupiers and lessees" from working the mines. But it is thought necessary to introduce safe-guards for the protection of life and property by preventing damage to the surface and not to allow the "owners, occupiers and lessees" to work the mines underneath the surface of the lands acquired without taking due precaution for its safety. Hence it is necessary that the Governments would be informed of the intention of the "owners occupiers and lessees" to work the mines at least 2 months previous to the commencement of the working of the mines, so that the Government may in the meantime be able to ascertain by inspection by experts (called Inspector of mines) whether the mine underneath the surface-land acquired could at all be worked without damage to the surface and the works thereon and if worked, what necessary precautions are to be taken to work the same so as to prevent loss of life and property. If it appear to the Government that the working of such mines or minerals is likely to cause damage to the surface and works thereon and if the Government be willing to make

compensation for such mines or any part thereof to such "owner, lessee or occupier" thereof, then he shall not work or get the same and if the Government and such owner, lessee or occupier do not agree as to the amount of such compensation the same shall be settled as in other cases of disputed compensation. *In Re Richard and G. W. Rail Co.,* (1905) 1 K.B. 68.

Sixty Days Notice :—Section 78 of the Railway Clauses Consolidation Act, 1845, prescribes only 30 days for the notice. "It has been urged that the notice of thirty days to be given to the Government under Section 3 of the Bill as introduced, by a mine-owner desiring to work his mines, is too short, having regard to the delays in communication in this country. We think the objection is reasonable and we have accordingly (in Section 4 of the amended Bill) extended the period to sixty days" *Select Committee Report dated 23-9-85 para. 5.*

Power to prevent or restrict working.

5. *(1)* At any time or times after the receipt of a notice under the last foregoing section and whether before or after the expiration of the said period of sixty days, the Local Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose; and

(2) If it appears to the Local Government that the working or getting of the mines or minerals or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the Local Government may publish a declaration of its willingness, either—

(a) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same; or

(b) to pay compensation to all such persons in consideration of those mines or

minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the Local Government may in its declaration specify.

(3) If the declaration mentioned in case (a) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(4) If the declaration mentioned in case (b) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the Local Government.

(5) Every declaration made under this section shall be published in such manner as the Local Government may direct.

NOTES.

Amendment :—By Section 2 of the Devolutions Act XXXVIII of 1920, in Sub-section (2) of Section 5, the words "in such manner as the Governor-General in Council from time to time direct" have been omitted and to the same section the following sub-section has been added, namely, "(5). Every declaration made under this section shall be published in such manner as the Local Government may direct."

Objects and Reasons for this Section :—If it appears to the Local Government that the working of the mines or minerals is likely to cause damage to the surface of the land or any works thereon the Local Government may at any time offer either (a) to pay compensation for the mines or minerals to the owner, lessee or occupier ; (b) to pay compensation to the owner, lessee or occupier of the mines or minerals in consideration of his working or getting them in such manner and subject to such restrictions as the Local Government may in its offer specify. If the offer mentioned in case (a) is made then the owner, lessee or occupier is prohibited from working the mines or minerals, whilst if the offer mentioned in case

(b) is made then he may not work or get the mines or minerals save in the manner and subject to the restrictions specified by the Local Government. *Statement of Objects and Reasons.* Lord Chemsford observed in *Great Western Ry. Co.* v. *Bennet,* L.R. 2 H.L. 27, that "If the company desires to postpone the purchase of the mines until it is known that they are to be worked, the company is enabled to do so with perfect safety from the protection offered by the 28th Section which compels the mine-owner whose mines lie under the Railway or within a certain distance of it, who is desirous of working the same to give thirty days, notice of his intention and the company may then cause the mines to be inspected, and if it appear that the working of the mines is likely to damage the Railway and if the Company be willing to make compensation for the mines to the owner he shall not work or get the same. This section appears to me to leave the mine-owner free to work his mines exactly as he would if the surface belonged to him unless the Railway Company chooses to prevent him by expressing willingness to make compensation."

Before or After the Expiration of the period of 60 days :—The person entitled to work the mine, when only the surface-land is acquired under Section 3 of the Act and the mine is excluded by the Collector by inserting a statement to that effect either in the award, or in his statement of reference or by publication of a declaration as prescribed by Section 3, must give a notice to the Local Government of his intention to work the mine at least sixty days before the commencement of the work. Section 5 provides that the Local Government may cause the mines or minerals to be inspected whether before or after the expiration of the said period of sixty days. Section 79 of the Railway Clauses Consolidation Act, 1845, lays down that "If before the expiration of such 30 days the company do not state their willingness to treat with such owner, lessee or occupier for the payment of such compensation it shall be lawful for him to work the said mines etc. Section 5 leaves to the discretion of the Local Government to acquire the mines either before the expiration of the period of sixty days from the date of the notice or after the said period. This is to conform to the views of the House of Lords in *Dixon* v. *The Caledonian Railway Co.,* 5 A.C. 720, where it has been held, that "when a mine owner gives notice under Section 78 of the Railway Clauses Act, 1845, of his intention to work minerals, the Railway company is not, for the purpose of giving its counter-notice to stop or control the working, *limited to the thirty days for which the mine owners notice runs* ; that the period of thirty days is merely prescribed as a period until the expiration of which the mine-owner is give its counter-notice, though of course, if given at any time

give its counter-notice, though of course if given at any time after the thirty days had expired and the workings had been commenced, it would have no effect except as regards the further progress of the workings." "We have therefore thought it safe to amend the sections concerned in such a manner that they will in a clear and unmistakeable way express the effect of the English Act as construed by the House of Lords." *Report of the Select Committee dated 23-9-85.*

Mode of determining persons interested and amount of compensation.

6. When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interested in those mines or minerals and the amounts of compensation payable to them respectively shall, subject to all necessary modifications, be ascertained in the manner provided by the Land Acquisition Act, 1870,* for ascertaining the persons interested in the land to be acquired under that Act, and the amounts of compensation payable to them, respectively.

NOTES.

Mode of Determining Compensation :—The section provides for the manner in which the amount of compensation to be paid under Section 5 is to be determined and it lays down that the amount of compensation to be paid under Section 5 is to be determined in the manner provided by the Land Acquisition Act (1894) Section 23. If the company and such owner, lessee or occupier, do not agree as to the amount of such compensation, the same shall be settled as is done in other cases of disputed compensation i.e. by reference to the Court under Section 18 of the L. A. Act.

Persons interested :—The expression "person interested" has been defined in Section 3 (b) of the L. A. Act (1894). It includes all persons *claiming* an interest in compensation to be made on account of the acquisition of land under the Act (*vide* notes under Section 3 (b). The term "persons interested" have been substituted in this section in the place of "owners, lessees

* See now the Land Acquisition Act I of 1894.

and occupiers," to avoid the confusion created by the use of these expressions in the English Act. The reasons for substituting these words in the place of "owners, lessees and occupiers" in the English Act are explained in the following manner by the *Report of the Select Committee, dated the 23rd September 1885*: "Another important English decision which points to an amendment of the Bill is that in *Smith* v. *Great Western Railway Co.*, 2 C. D. 235, and in appeal before the House of Lords, (3 App. Cas. 165). We may have, under a Bill of this sort, a state of things to deal with of which that case affords an illustration, where one person holding under a terminable lease has an immediate right to work the minerals, and another person is entitled to the reversion on the expiration of the lease and perhaps to a rent or royalty during its continuance. The lease may or may not be of such a length as to admit of all the minerals being worked out during its continuance, and it may or may not be liable to be put an end to by forfeiture or otherwise before the expiration of its term. The provisions of the English Act, which deal specially with the subject now before us, and which have been incorporated in the Bill, were found inadequate to provide for the exigencies of such a state of things as that referred to. They probably contemplate a settlement only with the person immediately entitled to work the mines, and in order to provide for the case of a reversioner or other person interested, it was found necessary to call in the aid of a general provision of the law which would be out of place in a Bill like this. It appears to us that the simplest mode of dealing with the various interests that may co-exist in the mines is to require, in accordance with the scheme of the Land Acquisition Act that they should all, whether present or future, be considered and compensated for simultaneously, whenever the owner of the surface has occasion to exercise his power of stopping or controlling the working. We have accordingly provided in effect that where the person immediately entitled to work the mines intimates to the owner of the surface his intention to work them, and the latter after that determines to stop or control the working the settlement of compensation must extend to all persons interested in the mines and the stoppage or control will be binding in perpetuity on all alike".

Owners, Lessees and Occupiers :—"The word 'owner' when used in relation to a mine means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof ; and does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine subject to any lease, grant or license for the working thereof ; or is merely the owner of the soil and not

interested in the minerals of the mine ; but any contractor for the working of the mine or any part thereof shall be subject to the Act in like manner as if he were an owner, but not so as to exempt the owner from any liability" Section 3 (c) of the Indian Mines Act VIII of 1901.

Measure of Compensation :—The mine-owner prevented from working his minerals is to be fully compensated—the Act says so. That means that so far as money can compensate him he is to be placed in the position in which he would have been if he had been free to go on working. The true enquiry here is not what is the value of the coal-field or of the coal but what would the colliery company if they had not been prohibited, have made out of the coal during the time it would have taken them to get it". *In the Bullfa and Merthyr Dare Steam Collieries (1891) Ld.* v. *The Pontypridd Water-Works Co. Ld.* (1903) A. C. 426, the owners of a coal mine under and near water-works gave the undertakers notice under Section 22 of Water-works Clauses Act, 1874, that they intended to work the coal. The undertakers replied by a counter-notice requiring the mine-owners not to work and stating their willingness to make compensation. In an arbitration under the Act to assess the compensation the mine-owners gave evidence to prove that coal rose in value after the date of the counter-notice :—Held, that there was no purchase of the coal or transfer of the property in the coal ; that the enquiry was not what was the value of the coal at the date of the counter-notice but what would the coal-owners, if they had not been prohibited, have made out of the coal during the time it would have taken them to get it and that the evidence is admissible.

One effect of this is that if the enquiry takes places some time after the notice is given, all unexpected and unforeseen alterations in the price of the mineral which have taken place in the interval may properly be taken into account in assessing the compensation.

If Local Government does not offer to pay compensation mines may be worked in a proper manner.

7. *(1)* If before the expiration of the said sixty days the Local Government does not publish a declaration as provided in Section 5, the owner, lessee, or occupier of the mines may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a

manner proper and necessary for the beneficial working thereof and according to the usual manner of working such mines in the local area where the same are situate.

(2) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee, or occupier of the mines shall at once, at his own expese, repair the damage or remove the obstruction, as the case may require.

(3) If the repair or removal is not at once effected or if the Local Government so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the Local Government may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby.

NOTES.

Section 7 is Section 79 of the Railways Clauses Consolidation Act, 1845 with slight modifications. Section 79 of the Railway Clauses Consolidation Act, 1845, runs as follows:—"If before the expiration of such thirty days the company do not state their willingness to treat with such owner, lessee or occupier for the payment of such compensation; it shall be lawful for him to work the said mines or any part thereof, for which the company shall not have agreed to pay compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof and according to the usual manner of working such mines in the district where the same shall be situate and if any damage or obstruction be occasioned to the railway or works by improper working of such mines, the same shall be forthwith repaired or removed as the case may require, and such damage made good by the owner, lessee, or occupier of such mines, minerals and at his own expense; and if such repair or removal be not forthwith done or if the company shall so think fit without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby, by action in any of the superior Courts."

Right to work the Mines :—When a mine-owner gives notice under Section 78 of the Railway Clauses Act, 1845, of his intention to work minerals, the Railway Company is not for the purpose of giving its counter-notice to stop or control the working *limited to the thirty days for which the mine-owner's notice runs, that the period of thirty days is merely prescribed until the expiration of which the mine-owner is debarred from working* and that the Company can at any time give its counter-notice though of course, if given at any time after the thirty days had expired and the workings had been commenced, it would have no effect except as regards the further progress of the working," *Dixon* v. *The Caledonian Railway Co.*, 5 A.C. 820.

Manner of working the Mines :—If before the expiration 60 days the Local Government does not publish a declaration for acquisition of the mines as provided in Section 5, the owner lessee, or occupier of the mines may, unless and until such declaration is subsequently made, *work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof and according to the usual manner of working such mines in the Local area where the same are situate.* The mine-owner may work his mines in a manner beneficial to himself, in order to win the largest quantity of minerals that the mine will yield, but not so as to depart from the usual manner of working in the district. *Great Western Railway Co.* v. *Bennet*, L.R. 2 H.L. 39. If in any particular spot the minerals come so close to the surface that it is necessary for the beneficial working of these minerals, and according to the usual manner of working them in the district, that they shall be worked from above downwards the mine-owner has a right to do it. *Ruabon Brick Co.* v. *Great Western Railway Co.*, (1893) 1 Ch. 427. But it has been observed by Lord Macnaghten in *Midland Railway Co.* v. *Robinson*, L.R. 15 App. Cas. 19, that "I do not think that it necessarily follows that a mine-owner who is entitled to withdraw support by working his mines in the ordinary course, if the company did not compensate him, is entitled to *enter upon the surface* which unquestionably belongs to the Railway Company, and break it up by working from the surface." *In re Todd Brileston and Co.*, (1903) 1 K.B. 603.

Damage done to the Surface by the Improper working of the Mines :—If any damage or obstruction is caused to the *surface* of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines shall at once, *at his own expense* repair the damage or remove the obstruction as the case may be. If the repair of the damage or removal of the obstruction is not at once

effected, or if the Local Government so thinks fit, without waiting for the same to be effected by the owner, occupier or lessee, may execute the same and recover from the owner, lessee or occupier the expenses occasioned thereby.

The Local Government acquires the land for the Company and the land vests absolutely in the company after the Local Government has delivered possession thereof to the Company. Should thereafter, any damage be caused to the surface of the land or any works thereon, by the improper working of the mine by the mine-owner, it is not clear what interest has the Local Government to recover damages for the laches of the mine-owner. If any body has any right to recover damages, it is the Company in whom the land has vested. To remove the anomaly it has been provided in Section 14 of the L. A. (Mines) Act XVIII of 1885) that "Section 4 to 13 both inclusive shall be read as if for the words "the Local Government" wherever they occur in those sections, the words "the local authority or company as the case may be which has acquired the land" were substituted.

How are damages to be recovered :—Section 79 of the Railway Clauses Consolidation Act, 1845, contains the provision that in case of damages done to the surface of the land or any work thereon by the improper working of the mines, by the mine-owner "it shall be lawful for the company to execute the same, and recover from such owner, lessee or occupier the expense occasioned, thereby, *by action in any of the superior courts.*" Section 7 of the Land Acquisition (Mines) Act is silent on that point as to how are the damages are to be recovered. From *the Report of the Select Committee dated 23-9-85,* regarding Section 11 of the Bill (Section 14 of the Act) which runs as follows, "If the Local Government or the company exercising the powers of the Local Government neglects to come to terms with the mine-owner on his giving notice of his intention to work it, does so at the risk of its property. If considering that the mine-owner is working improperly, it takes steps under Section 7 to remedy the mischief with a view to charging the mine-owner with the cost, it does so at the risk of losing its money and of incurring serious legal consequence, *if the Court before which the case may ultimately come takes a different view* of the matter. Similarly, if it considers that the mines are being worked contrary to the provisions of the Act, and proceeds to take steps under Section 14, it still acts at its own risk, for it is by no means certain that it will appear to the *Court* that the mines were being so worked." There is no room for doubt that in drafting Section 7 the Legislature had in view the procedure mentioned in Section 79 of the Railway Clauses Consolidation

Act, 1845, though the words "by action in superior Courts" have been omitted from the section.

Mining communications.

8. If the working of any mines is prevented or restricted under section 5, the respective owners, lessees and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain and work their said mines; but no such airway, headway, gateway or water-level shall be of greater dimensions or section than may be prescribed by the Local Government in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, as to interfere with the use thereof.

NOTES.

Amendment :—By Section 2 of the Devolution Act XXXVIII of 1920, the words "Local Government" have been substituted for the words "Governor-General in Council," in Section 8. The Section refers to the working of the mines *excepting the portion that lies immediately underneath the surface acquired,* and the working of which is prevented or restricted, and affords facility to the mine-owners to work his mine in those parts, which he is not prevented from working, and if in working in these parts beneficially it becomes necessary to cut and make airways, headways, gateways, or water-levels, *through the mines, measures or strata, the working whereof is prevented or restricted,* he may cut and make such and so many airways, headways, gateways, or water-levels, *through the mines, measures or strata the working* whereof is prevented or restricted, but subject to the proviso that such

airway, headway, or water-level through the mines, measures or strata the working whereof is prevented or restricted, be not of greater dimensions or section than may be prescribed by the Local Government and if no dimensions or sections are prescribed by the Local Government not greater than 8′ wide and 8′ high and provided the same airways, headways, gateways, or water levels be not cut or made upon any part of the surface or works or so as to injure the same or to interfere with the use thereof. He is not entitled to claim access over a Railway since that would constitute a trespass. *Midland Railway Co.* v. *Miles*, (1886) 30 Ch. D. 634. This is Section 80 of the Railway Clauses Consolidation Act 1845.

Local Government to pay compensation for injury done to mines.

9. The Local Government shall, from time to time, pay to the owner, lessee or occupier of any such mines, extendnig so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the land lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Local Government which can not be obtained by reason of the action taken under the foregoing sections; and if any dispute or question arises between the Local Government and provided for the settlement of questions touching the amount of those losses or expenses the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the L. A. Act 1870.*

* See now the Land Acquisition Act I of 1894.

NOTES.

This is Section 81 of the Railway Clauses Consolidation Act, 1845. Under the provisions of this section, an owner or lessee of mines under adjoining lands is entitled to compensation for additional expenses incurred through the difficulty of obtaining access by tunnelling under a railway. *Midland Rail Co. v. Miles*, (1886) 30 Ch. D. 634. Where the expense though not actually incurred, is capable of immediate ascertainment, it can be recovered at once. *Whitehouse* v. *Wolverhampton Railway Co.*, L.R. 5 Ex. 6.

"Sections 8, 9 and 10 corresponding to Sections 80, 81 and 82 of Railway Clauses Consolidation Act, 1845, have been introduced out of deference to the wishes and representations made by coal companies. We have introduced these new Sections (8, 9 and 10), corresponding to Sections 80, 81, and 82 of the Railway Clauses Consolidation Act 1845. We question whether the object of these sections would not have been otherwise attained through the medium of the Land Acquisition Act, the provisions of which were made applicable by Section 6 of the Bill as introduced ; but as importance appeared to be attached to them in the memorial of the Coal Companies, we have thought it better to remove all doubt by including them. They will doubtless overlap Section 6 of the Bill, but no practical harm will result from this." *Para 8 of the Select Committee Report, dated 23-9-85.*

And also for injury arising from any airway or other work.

10. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner lessee or occupier of those mines) by reason of the making of any such airway, or other works as aforesaid, which or any like work it would not have been necessary to make for the working of the mines having been so prevented or restricted as aforesaid, the Local Government shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him.

NOTES.

This is Section 82 of the Railway Clauses Consolidation Act 1845. The section refers to compensation payable *to the owner or occupier of lands* over the mines the working of which has been prevented or restricted by reason of the making of any airway, or other works, which would not have been necessary if the working of the mines had not been prohibited or restricted.

Powers to officer of Local Government to enter and inspect the working of mines.

11. For better ascertaining whether any mines laying under land acquired in accordance with the provision of this Act are being worked, or have been worked, or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being or are about to be worked.

NOTES.

This is Section 83 of the Railway Clauses Consolidation Act, 1845. The officer appointed by the Local Government is generally the Inspector of Mines or the Chief Inspector of Mines whose chief duty is to see whether the surface of the land acquired is likely to be affected by the working of the mines underneath and whether proper means have been adopted by the owner, lessee or occupier of the mines for the working of the mines, so as not to affect the surface of the land above. The owner, occupier and lessee of the mine is bound to give the officer appointed by the Local Government for inspection

of the mines, every facility to inspect the same; in default to be liable to a penalty of Rs. 200/-.

Penalty for refusal to allow inspection.

12. If any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by the Local Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred Rupees.

NOTES.

This is Section 84 of the Railway Clauses Consolidation Act, 1845, and the section makes it obligatory on every owner, lessee or occupier of the mine to allow the officer appointed by the Local Government for inspection, inspection of the mine on his giving 24 hours' notice. And the owner, lessee or occupier of the mines renders himself liable to a fine not exceeding Rs. 200/- in case he fails to give the officer inspection as per notice.

If mines worked contrary to provisions of the Act, Local Government may require means to be adopted for safety of land acquired.

13. If it appears that any such mines have been worked contrary to the provisions of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired, and the works thereon and preventing injury thereto; and if, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the Local Government may itself construct the works and recover the expenses thereof from the owner, lessee or occupier.

NOTES.

This is Section 85 of the Railway Clauses Consolidation Act, 1845.

Contrary to the Provisions of the Act. The owner, lessee or occupier works the mines contrary to the provisions of the Act (1) where he works the mines without giving the notice of his intention to work the mines—sixty days before he commences the work, Section 4; (2) when he works the mine inspite of a counter-notice by the Local Government forbidding him to work the mines, Section 5; (3) when he does not work the mines in a manner proper and necessary for the beneficial working thereof and according to the usual manner of working such mines in the local are where the same are situate, and according to the instructions issued by the Local Government after inspection under Section 13.

The object of the Section is to prevent damage to the surface of the land acquired or any works thereon and if for that purpose the Government on the report of inspection of the officer appointed for the purpose, thinks that additional measures to be adopted, it shall give notice to the owner, lessee or occupier of the lease to take such measure within a time specified therein and in default of compliance the Government is given the power to construct the works necessary for *making safe the land acquired.* The Local Government must be re-imbursed the costs incurred therefor by the owner, lessee or occupier of the mines.

Construction of Act when land acquired has been transferred to a local authority for Company.

14. When a statement under Section 3 has been made regarding any land and the land has been acquired by the Government and has been transferred to or has vested by operaftion of law, in, a Local Authority or Company, then sections 4 to 13 both inclusive, shall be read as if for the words "the Local Government," wherever they occur in those section, except in Section 5, Sub-section (5) and Section 8, the words "the Local Authority or Company as the case may be, which has acquired the land" were substituted.

Delegation of Authority :—An objection has been taken in some quarters to Section 11 of the Bill as introduced (now Section 14) which in effect gives to certain companies the powers conferred on the Local Government by some of the foregoing provisions of the Bill. It appears to be overlooked that the section in question can apply only to companies established for such purposes and occupy such a position from a public point of view as would warrant the Government in acquiring land on their behalf. In particular it is provided, by (Section 48 and 49 of) the Land Acquisition Act, that land shall not be acquired for a company under that Act unless it is needed for a work likely to prove useful to the public, and the Company enters into an agreement with the Government settling among other matters, the time within which and the conditions on which the work shall be executed and maintained and the terms on which the public shall be entitled to use it.

We may further observe that there appears from some of the papers considered by us to be a certain amount of misapprehnsion as to the nature of the powers referred to.

If the Local Government or the Company exercising the powers of the Local Government neglects to come to terms with the mine-owner on his giving notice of his intention to work, it does so at the risk of its property. If, considering that the mine-owner is working improperly, it takes steps under Section 7 to remedy the mischief with a view to charging the mine-owner with the cost, it does so at the risk of losing its money and of incurring serious legal consequences, if the Court before which the case may ultimately come takes a different view of the matter. Similarly, if it considers that the mines are being worked contrary to the provisions of the Act and proceeds to take steps under Section 13, it still acts at its own risk, for it is by no means certain that it will appear to the Court that the mines were being so worked.

Thus the powers in question are very far from being so formidable as has been supposed, and we may add that they are framed as closely as possible on the lines of those conferred by Parliament on Railway Companies in England, the substance of which seems generally to have met with approval."

We have placed "local authorities on a footing similar to that of Companies as in many recent Acts, the provisions of the Land Acquisition Act have been made applicable for the purpose of acquiring land for such authorities." *Report of the Select Committee dated 23-9-85.*

Amendment :—By Section 2 of the Devolution Act XXXVIII of 1923, the words "except in Section 5, Sub-section (5) and Section 8" have been inserted after the words "those Sections."

Pending cases.

15. (*1*) This Act shall apply to any land for the acquisition whereof proceedings under the Land Acquisition Act, 1870,* are pending at the Time when this Act comes into force, unless before that time the Collector has made, in respect of the land, an award under Section 14† or a reference to Court under Section 15† of that Act, or has taken possession of the land under Section 17† of the same.

(*2*) When the Collector has before the said time made an award or reference in respect of any such land or taken possession thereof as aforesaid, and all the persons interested in the land, or entitled under the Land Acquisition Act, 1870,* to act for persons so interested, who have attended or may attend in the course of the proceedings under Section 11 to 15, both inclusive, of the Land Acquisition Act, 1870,* consent in writing to the application of this Act to the land, the Collector may by an order in writing direct that it shall apply, and thereupon it shall be deemed to have applied from the commencement of the proceedings; and the Collector shall be deemed, as the case may be, to have inserted in his award or reference, or to have published in the prescribed manner, when he took possession, the statement made in section 3 of this Act.

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* See now the Land Acquisition Act I of 1894.

† See now Ss. 11, 19, and 17, respectively, of the Land Acquisition Act, I of 1894.

NOTES.

Retrospective Effect:—"We are informed that there are certain land acquisition cases pending at this moment in Bengal, which have already proceeded beyond the state at which the provisions of this measure would in its ordinary course be applicable to them, but in which it may nevertheless be thought desirable to have the benefit of it. To meet this, we have inserted a clause 15 (2) which will admit of the Bill being applied in such cases if those concerned unanimously desire that it should." *Report of the Select Committee dated 23-9-85.*

Definition of local authority and Company.

16. In this Act—

(*a*) "Local Authority" means any municipal committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of any Municipal or Local fund; and

(*b*) "Company" means a Company registered under any of the enactments relating to Companies from time to time in force in British India, or formed in pursuance of an Act of Parliament or by Royal charter or Letters Patent.

NOTES.

"We have placed 'local authorities' on a footing similar to that of companies, as in many recent acts the provisions of the Land Acquisition Act have been made applicable for the purpose of acquiring land for such authorities." *Report of the Select Committee dated, 23-9-85.*

This Act to be read with Land Acquisition Act, 1870.*

17. This Act shall, for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, 1870.*

* See now the Land Acquisition Act I of 1894.

NOTES.

Section 2 of the Land Acquisition Act I of 1894 provides that "All proceedings commenced, officers appointed or authorised, agreement published and rules made under the Land Acquisition Act, 1870, shall as far as may be deemed to have been respectively commenced, appointed or authorised, published and made under this Act. And any enactment or document referring to the said Land Acquisition Act, or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof." Hence this Act shall, for the purposes of all enactments, for the time being in face, be read with and taken as part of the Land Acquisition Act, 1894.

PART III.

MODEL PETITIONS AND PLEADINGS

UNDER THE LAND ACQUISITION ACT.

FORM I.

Petition of Objection to Acquisition under Sec. 5A of the L. A. Act I of 1994.

To

The Collector,

District...............

Re: Acquisition of................

The humble petition of....................of........................ respectfully Sheweth :—

1. That your petitioner is the proprietor (Co-proprietor Sub-proprietor, mortgagee or tenant, as the case may be) of the aforesaid land, which has been notified under Section 4, Sub-section (1) of Act I of 1894 as being needed or likely to be needed for the Public purpose, viz.....................

2. That your petitioner, being a person interested in the said premises as a proprietor (Co-proprietor, Sub-proprietor mortgagee or tenant, as the case may be) begs to prefer objections to the acquisition of the same on the following amongst other grounds :—

(*a*) For that regard being had to the condition of the locality it is unnecessary and useless to acquire any land for the purpose for which it is proposed to be acquired ;

(*b*) for that the purpose, for which the land is said to be needed or is likely to be needed is not a public purpose ;

(*c*) for that the purpose, for which the land is said to be needed, would not be in the interest of public health and sanitation ;

(*d*) for that, on the contrary, the lands, if acquired for the purpose aforesaid, would greatly affect the health and sanitation of the locality ;

(*e*) for that the purpose may be equally served with comparatively less costs and much less hardship and inconvenience to the people of this locality if it is carried out in the following manner, that is to say, (here state the alternative proposal) ;

(*f*) for that the benefit that would arise from the execution of the project would be more than counterbalanced by the hardship and inconvenience that would be caused to the people of the locality ;

(*g*) for that the project, if carried out, will materially affect the petitioner's other land or building which is necessary to be retained by him for the beneficial enjoyment thereof.

In the aforesaid circumstances, it is respectfully prayed, that the project may be abandoned and that no acquisition be made for the purpose for which it is proposed to acquire the land herein or in the alternative the scheme may be carried out in the manner suggested above, involving less costs and hardship.

N. B. :—No Court-fee stamp is necessary for a petition under section. 5A. All the objections enumerated above will not be applicable in each case. Each case must be governed by facts and circumstances peculiar to itself. A person interested may very well object to the acquisition of land for the project of a "leper asylum" or a Municipal "pale depot" in residential quarters but he can not reasonably object to the acquisition of land for a School, College or a public Square or play ground unless he can suggest a better alternative proposal. The Acquiring Body is bound to provide proper house accommodation for a large number of people who may find themselves homeless by reason of the execution of large schemes such as those of Improvement Trusts before acquisition.

FORM II.

Statement of Claim under Sec. 9 of the L. A. Act I of 1894.

To

The Collector under the L. A. Act I of 1894.

Dt....................................

L. A. Case No...............of...........................

Re: Project..............

Statement of Claim by.....................of............................

The abovenamed claimant begs respectfully to state as follows:—

1. That he is proprietor (co-proprietor, sub-proprietor, mortgagee or tenant, as the case may be) of the land proposed to be acquired in the above case.

2. That the land proposed to be acquired in the above case within the boundaries mentioned in the notices is by measurement.......................and not..................................as stated in the notice.

3. That this claimant would value the land at Rs............ per.................(and Rs.....................for the building standing therein, if any, a detailed valuation of which by Mr.............. Civil Engineer and Valuer is appended herewith).

4. That he would claim Rs............for the standing crops or trees a list of which is hereunto annexed.

5. That he would claim Rs...............for damage (if any) for severance of the land acquired in the above case from his other land.

6. That he would claim Rs................for damage (if any) sustained by him by reason of the acquisition injuriously affecting his other property *viz*....................and Rs............ for injuriously affecting his income.

7. That he would claim Rs........................as expenses incidental to the change of residence or place of business.

8. That he would claim Rs..................as the damage (if any) that has resulted from the diminution of the profits of the land between the date of the publication of the declaration and the time of the Collector's taking possession.

9. That he would also claim usual 15% statutory allowance on the above amounts.

N. B.:—No Court-fee is needed on a statement of claim under Sec. 9. It is necessary that the statements of claims should be most carefully prepared. Claims are so

perfunctorily made, owing to the want of proper appreciation of section 23 of the Act that most of the damages, mentioned in Sec. 23 are not claimed at all and consequently no damages are awarded. The distinction between damages for severance and damage for injurious affection should be carefully noted, and claim should be filed in each case with such modification as in each case may seem to be fit and proper, regard being had to the damages, which are frequently overlooked. All attention seems to be bestowed on the market-value of the land to the exclusion of the damages and in the case of market-value exaggeration should always be avoided.

FORM III.

Statement of Claims under Sec. 10 of the L. A. Act I of 1894.

To

The Collector under L. A. Act I of 1894.

....

Re: L. A. Case No.......of......

Re: Project.........................

Statement of Claims of...................of.......................

In pursuance of a notice under Section 10 of the L. A. Act of 1894, the claimant abovenamed begs to state as follows:—

firstly, that he is the sole proprietor of the premises to be acquired in the above case, and there is no co-proprietor, sub-proprietor, mortgagee, tenant or otherwise of the property, (*or in case of joint property*)

first, that he is a co-proprietor of the premises to be acquired in the above case with................of................as joint proprietors;

secondly, that the property is free from all encumbrances and has not been mortgaged and has not been made a charge in any way; (*or, when there is a mortgage or charge*)

secondly, that the property is under the mortgage of Rs.................in favour of....................of....................

by a deed of mortgage.................and the amount due to the mortgagee with interest would amount to Rs....................more or less.

or

that by a deed of Trust (or Endowment or Wakf........... or by an agreement or by decree) the property is subject to a charge for the payment of the sum of Rs..................per mensem (or annum as the case may be) for the due performance of the worship of.................at.................or for the maintenance of.................during her natural term of life ;

thirdly, there is no tenant on the premises, who has got any heritable and transferable interest in the same. The tenants are (1).................(2).... ....(3).................... who are all tenants-at-will ;

or

(when there is lease for a term of years of for an indefinite term).

thirdly, the property has been leased out to................. of.......................for a term of.......................years reserving a monthly (or yearly) rent of Rs.......................(and if there is a clause in the lease for forfeiture in case of notice of acquisition given) that the tenant has no right to share any portion of the compensation money under the agreement between the parties ;

fourthly, the rents and profits received on account thereof for three years next preceding are set forth in the table annexed hereto.

Table showing gross income for three years.

Year.	Rupees.	annas.	pies.
1924.	....	....	....
1925.	....	....	....
1926.	....	....	....

N. B. :—A statement under Section 10 does not require any court-fee stamp. It is not obligatory on the Collector to issue any notice under Section 10. Notice under Section 10 is issued only when there are conflicting claims and discrepant accounts of rents and profits. No statement under Section 10 should be made haphazardly but should be made after very careful

consideration of the deeds and books of account because in case any statement is made which cannot be supported by trustworthy evidence in court on reference, the party is likely to be saddled with heavy costs and interests.

FORM IV.

Petition of Reference under Sec. 18 of the L. A. Act I of 1894.

To

The Collector under Act I of 1894.

....

L. A. Case No..........of.........

Re: Project............................

The humble petition of...
of...... ....respectfully Sheweth :—

1. That an award dated the... ....day of..............
192 has been made by your Honour for the acquisition of the land in the above case.

2. That your petitioner is a person interested in the land and being aggrieved by the award,

Your petitioner prays that your Honour may be pleased to refer the case to the Civil Court under Section 18 of the L. A. Act I of 1894 for the determination of the question of valuation and (or) apportionment on the following amongst other grounds :—

GROUNDS :—

(a) For that the measurement of the land acquired in the above case should have been held to be...........
and not............

(b) For that the land has been greatly undervalued and that the market-value should have been held to be not less than Rs..................per...........

(c) For that the building on the land acquired should have been valued at Rs..................

(d) For that the learned collector's award of damages for standing crops and trees is quite inadequate.

(e) For that the learned Collector should have held that the claimant has sustained considerable damage by reason of the acquired land being severed from his other lands and should have awarded Rs............ for damage for severance.

(*f*) For that the Collector should have held that the acquisition of the land acquired has injuriously affected his property viz. :-- and has affected his earnings and should have allowed Rs............and Rs............respectively damages.

(g) For that the Collector should have awarded Rs.................as damage for diminution of the profits of the land acquired between the time of the publication of notice under Section 4 (1) and the taking possession of the same.

(h) For that the apportionment made by the Collector is entirely wrong.

(i) For that the Collector should have held that........... claimant No....... ....has no right, title and interest in the land acquired and is not entitled to any portion of the compensation awarded for acquisition of the same.

(j) For that the claimant No..................should have been held to be solely entitled to the land acquired, and whole of the compensation money awarded for acquisition of the same should have been awarded to him.

Notes :--The petition must bear a court-fee stamp of annas -/12/-. It need not be verified and it must be filed within six weeks from the date of the award, if the claimant was present when the award was made or was represented before the Collector ; in any other case within six weeks of the receipt of the notice of the award from the collector or within six months, when he was neither present, nor represented, nor had any notice of the award from the Collector whichever period shall first expire. It should specially be borne in mind that *no reference* lies unless the money is received *under protest.* (See 20 (a)).

FORM V.

Petition for stopping payment of compensation to a claimant under Sec. 31 (2) of the L. A. Act I of 1894.

To

The Collector under Act I of 1894,

of..................................

L. A. Case No................of..............

Re: Project.............................

The humble petition of A. B...................................of ....respectfully sheweth:—

1. That an award has been made by your Honour in the above case awarding.................to C. D..................claimant No..... ....

2. That the said C. D. has no right, title and interest in the property acquired in the above case, and that he is not entitled to receive the compensation money awarded for the same or any portion thereof.

3. In the aforesaid circumstances, your petitioner humbly prays that your Honour will be pleased not to pay the compensation awarded in the above case to C. D. or any portion thereof to him, but to send the amount for deposit in the Court under Section 31(2) of the L. A. Act.

And for which your petitioner as in duty bound shall ever pray.

N. B.:—It should be noted that the Collector has to make a reference to the Civil Court of his own motion if there be any dispute as to the title to receive the compensation or as to the apportionment of it, and he shall deposit the amount of compensation in Court, Section 31(2). It is therefore, necessary that there must appear in the record dispute as to the title to receive the compensation or as to the apportionment of it before he can take action under Section 31 (2). As the Collector is bound to tender payment and to pay the compensation according to the award, no time should be lost to file the application before him before the payment is made, though a petition for reference would lie after payment.

FORM VI.

Petition for Investment under Sec. 33 of the L. A. Act, I of 1894.

In the Court of the Special L. A. Judge of........................
Dist..................................
L. A. Case No.........of...................
(valuation or apportionment).

The humble petition of A. B. of......................claimant No...............in the above case.
Respectfully Sheweth :—

1. That on account of the dispute as to the title to receive the compensation awarded in the above case or as to the apportionment of it, the Collector has deposited in this Court Rs...............the amount of compensation awarded in the above case to the credit of this Court in Civil deposit.

2. That your petitioner is solely entitled to the aforesaid compensation money and the claimant No..................has no title to receive any part of the compensation money.

3. That considerable time will elapse before the dispute can be decided by this Court and your petitioner will be a great loser in case the money is left in deposit without any profit.

4. That the sum in deposit would yield a large amount by way of interest if invested in government or other approved securities.

Your petitioner therefore humbly prays that the Court may be pleased to invest the amount in deposit in Court in the above case in Government or other approved securities as it may think proper.

And for which your petitioner as in duty bound shall ever pray.

FORM VII.

Form of Agreement under Sec. 42 of the L. A. Act I of 1894, between a Company and the Secretary of State for India in Council.

MEMORANDUM OF AGREEMENT made this.............. day of......................... between the...................registered under the Registration of Societies Act 1880 and having its registered office at............................(hereinafter called the

Society) of the one part and the Secretary of State for India in Council (hereinafter called the Secretary of State) of the other part WHEREAS for the purpose of............................the Society has applied to the Government of Bengal for the acquisition under the provisions of the Land Acquisition Act I of 1894 as amended by Act XXXVIII of 1923 of the piece or parcel of land containing..........................or thereabout a equivalent to...............................acre, situate at.................................., in the town of...........................and more particularly described in the Schedule hereto and delineated in the plan hereunto annexed AND WHEREAS the said Government of Bengal being satisfied by an enquiry held under sections 5A and 40 of the said Act that the proposed acquisition is needed for the aforesaid purpose and that the said work is likely to prove useful to the public, has consented to acquire on behalf of the........................ the piece or parcel of land hereinbefore described AND WHEREAS the said Government of Bengal has required the..............under the provisions of section 41 of the abovementioned Act to enter into the agreement with the Secretary of State hereinafter contained NOW THIS INDENTURE WITNESSETH that it is hereby agreed and declared as follows:—

1. On demand the....................shall and will pay to the said Government of Bengal all and every compensation in respect of the said land tendered paid or awarded or to be tendered paid or awarded by the Collector under the Land Acquisition Act I of 1894 as amended by Act XXXVIII of 1923, or by the Court to which a reference under Part III of the said Act may be made or by the Court or Courts to which an appeal from the award of the said Court may be preferred and all costs charges and expenses of the proceedings in the aforesaid Courts, or otherwise incidental to the proposed acquisition or payable in respect thereof under the provisions of the said Act.

2. On demand made by the said Collector the obligations of the...........under the last preceding clause not being thereby limited the...........shall and will deposit with the said Collector such sum or sums of money as in his discretion the said Collector may in anticipation estimate to be necessary for the purposes mentioned in the last preceding clause.

3. On payment by the..............of all demands under the foregoing first clause, or, in the discretion of the said Government of Bengal (on deposit by the Society of all estimated amounts as provided in the second clause) but not before possession shall have been raken under the provisions of the abovementioned Act, the Secretary of State shall make over possession of the said land to the.................and shall execute

and do all such acts and deeds as may be necessary and proper for effectually vesting the same in the.................

4. The said land shall be held by the.........................as is hereinbefore mentioned and without the sanction in writing of the said Government of Bengal first had and obtained for no other purpose whatsoever.

5. Should the said land at any time thereafter cease for a period of three consecutive months to be held and used or cease to be required for the purpose or purposes provided for in the foregoing fourth clause then and in any such case, the said Government may summarily re-enter upon and take possession of the land together with all buildings thereon whether such buildings were erected before or after transfer of the land to the..............and thereupon the interest of the................. in the said land and buildings shall absolutely cease and determine.

6. On taking such possession the said Government may sell or otherwise deal with the said land and buildings as it may think proper.

(i) Should the said Government sell the land with the buildings the said Government after deducting the expenses incurred in connection with the said taking of possession and with such sale shall pay the proceeds to the.................

(ii) Should the said Government decide not to sell the land and buildings, the said Government shall retain the said land and buildings thereon, in which case the Secretary of state shall repay to the.................... the market value as on the day of re-entry of all the buildings erected by the................. and all sums received from the.........................in respect of all and every compensation as provided in the foregoing first clause (less the statutory allowance of fifteen per cent. and less any amount received on account of trees and buildings which are not in existence at the time of resumption), but will not repay any sums paid and received on account of costs charges and expenses.

(iii) Should the said Government decide to sell the buildings only, upon such sale, the Secretary of State after deducting the expenses of taking possession and selling, pay the balance of the proceeds of sale to the..............together with the sum received from the....................in respect of the compensation for the land (less the statutory allowance of fifteen per

cent. and less any amount received from the........... on account of trees and buildings which are not in existence at the time of resumption) but will not repay any sum paid and received on account of costs charges and expenses.

7. The public shall be entitled to use the land through the ....on the terms on which the....................is used by the Public.

8. Should any dispute or difference arise touching or concerning the subject matter of this agreement or any covenant clause or thing herein contained, the same shall be referred to the said Government of Bengal and the opinion and decision of the said Government upon such dispute or difference shall be final and conclusive and binding on the parties hereto.

THE SCHEDULE ABOVE REFERRED TO:—

All that piece or parcel of land containing by estimation ....be the same a little more or less situate lying at and being part of.. and bounded on the North................... East by.............. South by............................... West by..........................

In witness whereof the ....has caused its common seal to be affixed and the Secretary of State for India in Council hath hereunto set his hand and seal the day and year first above written.

The common seal of the above-named...................was hereto affixed in the presence of.........

Seal.................

Signed sealed and delivered by Secretary to the Government of Bengal in the Revenue Department on behalf of the Secretary of State for India in Council in the presence of :—

Secretary to the Government of Bengal, Revenue Department.

Head Assistant,
Revenue Department.

Note:—This agreement being an agreement under Section 41 of the L. A. Act is not chargeable with any stamp duty. *Vide Section 51.*

FORM IX.

Petition for the Acquisition of the whole of the house, manufactory or building under Sec. 49 of the L. A. Act I of 1894, when only a part of a house, manufactory or building is notified to be acquired.

To

The Collector under Act I of 1894.

at..

L. A. Case No......................

Project................................

The humble petition of.......................of........................

Respectfully sheweth :—

1. That the property proposed to be acquired in the above case is a part of a house manufactory or building (as the case may be), and reasonably required for the full and unimpaired use of the said house manufactory or building.

2. That in case of such partial acquisition, the remainder of the house, manufactory or building will be so injuriously affected as to render it useless for the purpose for which the said house, manufactory or building is being used.

Your petitioner therefore prays that provisions of Act I of 1894 may not be put in force for the purpose of acquiring a part of the house, manufactory or building in the above case and that the whole of such house, manufactory or building be acquired.

And for which your petitioner as in duty bound shall ever pray.

N. B. :—An owner should exercise great caution before he puts in a petition under Section 49. The Collector can acquire a part of any house manufactory or building under the L. A. Act if the owner does not object. He must acquire the whole of the house, manufactory or building if the owner desire it. An owner must object if the proposed acquisition of a part has such an injurious effect on the rest of the house, manufactory or building as to render it useless to him for the purpose for which the same was used. An owner should not object, if it would inconvenience him a little but the loss can be compensated by money value. The section gives an owner, however, power to withdraw or modify his objection, before the Collector has made his award but not after, so as to give him sufficient time and opportunity to think it out for himself, which

is the lesser evil of the two, whether the acquisition of a part of his house, manufactory or building would or would not be preferable to the acquisition of the whole.

FORM X.

Notice of withdrawal and modification of objection under the Proviso to Section 49 of the L. A. Act I of 1894.

To

The Collector under Act I of 1894.

at..

L. A. Case No.....................

Project.................................

The humble petition of......................of......................
Respectfully Sheweth :—

1. That your petitioner is the owner of the house, manufactory or building, a part of which is proposed to be acquired in the above case.

2. That your petitioner has filed objection to the acquisition only of a part of the same house, manufactory or building and has prayed for the acquisition of the whole of the same by his petition dated the day of...........192 .

3. That in view of the loss and inconvenience to be caused to your petitioner by change of residence or place of business, your petitioner is advised that it would be to his advantage to stay in the house or carry on the business in the manufactory a part of which is proposed to be acquired in the above case.

Your petitioner, therefore, humbly wants to bring to your notice that he has no objection to the part of the same being acquired as proposed;

or

that he has no objection to the same being acquired as proposed, subject to the modification as hereinafter mentioned viz. :—(state the modification proposed).

N. B. :—It is merely a notice. It does not require any court fee stamp. In may be in any form.

PART IV.

EXTRACTS FROM OTHER ENACTMENTS ON COMPULSORY ACQUISITION.

A

INDIAN RAILWAYS ACT, IX OF 1890.

Sections 7—13.

Authority of railway administration to execute all necessary works.

7. Subject to the provisions of this Act, and in the case of immoveable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, and subject also, in the case of a railway company, to the provisions of any contract between the company and the Government, a railway administration may, for the purpose of constructing a railway or the accommodation or other works connected therewith, and, notwithstanding anything in any other enactment for the time being in force,—

(a) make or construct in, upon, across, under, or over, any lands, or any streets, hills, valleys, roads, railways, or tramways, or any rivers, canals, brooks, streams, or other waters, or any drains, water-pipes, gas-pipes, or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, acqueducts, bridges, roads, "lines of railway," ways, passages, conduits, drains, piers, cuttings, and fences as the railway administration thinks proper ;

(b) alter the course of any rivers, brooks, streams or water courses for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under them, and divert or alter, as well temporarily as permanently, the course of any rivers, brooks, streams, or watercourses, or any roads, streets, or ways, or raise or sink the level

thereof, in order the more conveniently to carry them over or under, or by the side of, the railway as the railway administration thinks proper ;

(c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway ;

(d) erect and construct such houses, warehouses, offices, and other buildings, and such yards, stations, wharves, engines, machinery, apparatus, and other works and conveniences as the railway administration thinks proper ;

(e) alter, repair, or discontinue such buildings, works, and conveniences as aforesaid or any of them, and substitute other in their stead ; and

(f) do all other acts necessary for making, altering, or repairing and using the railway.

(2) The exercise of the powers conferred on a railway administration by sub-section (1) shall be subject to the control of the Governor-General in Council.

Alteration of pipes wires and drains.

8. A Railway administration may for the purpose of exercising the powers conferred upon it by this Act, alter the position of any pipe for the supply of gas, water or compressed air, or the position of any electric wire, or any drain not being a main drain ;

Provided that—

(a) when the railway administration desires to alter the position of any such pipe, wire, or drain, it shall give reasonable notice of its intention to do so, and of the time at which it will begin to do so, to the local authority or company having control over the pipe, wire, or drain, or when the pipe, wire or drain, is not under the control of a local authority or company, to the person under whose control the pipe, wire, or drain is ;

(b) a local authority, company, or person receiving notice under proviso (a) may send a person to superintend the work, and the railway administration shall execute the work to the reasonable satisfaction of the person so sent, and shall make arrangements for continuing, during the execution of the work, the supply of gas, water, compressed air, or electricity, or the maintenance of the drainage, a the case may be.

9. (1) The Governor-General in Council may authorize any railway administration, in case of any slip or other accident happening or being apprehended to any cutting, embankment, or other work under the control of the railway administration, to enter upon any lands adjoining its railway for the purpose of repairing or preventing the accident, and to do all such works, as may be necessary for the purpose.

Temporary entry upon land for repairing or preventing accident.

(2) In case of necessity the railway administration may enter upon the lands, and do the works aforesaid, without having obtained the previous sanction of the Governor-General in Council, but in such a case shall, within seventy-two hours after such entry, make a report to the Governor-General in Council, specifying the nature of the accident or apprehended accident, and of the works necessary to be done, and the power conferred on the railway administration by this sub-section shall cease and determine, if the Governor-General in Council, after considering the report, considers that the exercise of the power is not necessary for the public safety.

10. (1) A railway administration shall do as little damage as possible in the exercise of the powers conferred by any of the three last foregoing sections and compensation shall be paid for any damage caused by the exercise thereof.

Payment of compensation for damage caused by lawful exercise of powers under section 7, 8 or 9.

(2) A suit shall not lie to recover such compensation, but in case of dispute the amount thereof shall, on application to the Collector, be determined and paid in accordance so far as may be, "with the provisions of sections 11 to 15, both inclusive, sections 18 to 34, both inclusive, and sections 53 to 54 of the Land Acquisition Act, 1894, and the provisions of sections 51 and 52 of that Act, shall apply to the ward of compensation."

11. (1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of land adjoining the railway, namely:—

Accommodation works.

(*a*) such and so many convenient crossings, bridges, arches, culverts, and passages over, under, or by the sides of, or leading to or from, the railway as may, in the opinion of the Governor-General in Council, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made, and

(*b*) all necessary arches, tunnels, culverts, drains, water-

courses, or other passages, over or under, or by the sides of, the railway, of such dimensions as will, in the opinion of the Governor-General in Council, be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be.

(2) Subject to the other provisions of this Act, the works specified in clauses (a) and (b) of sub-section (1) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby, and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works.

(3) The foregoing provisions of this section are subject to the following provisos, namely:—

(*a*) a railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive, and have been paid compensation in consideration of their not requiring the works to be made;

(*b*) save as hereinafter in this chapter provided, a railway administration shall not, except on the requisition of the Governor-General in Council, be compelled to defray the cost of executing any any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic;

(*c*) where a railway administration has provided suitable accommodation for the crossing of a road or stream, and the road or steam is afterwards diverted by the act or neglect of the person having the control thereof, the administration shall not be compelled to provide other accommodation for the crossing of the road or stream.

(4) The Governor-General in Council may appoint a time for the commencement of any work to be executed under sub-section (1), and if, for fourteen days next after that time, the railway administration fails to commence the work, or, having commenced it, fails to proceed diligently to execute it in a sufficient manner, the Governor-General in Council may execute it, and recover from the railway administration the cost incurred by him in the execution thereof.

12. If an owner or occupier of any land affected by a railway considers the works made under the last foregoing section to be insufficient for the commodious use of the land, or if the Local Government or a Local authority desires to construst a public road or other work across, under, or over a railway, he or it, as the case may be, may at any time require the railway administration to make at his or its expense such further accommodation works as he or it thinks necessary, and are agreed to by the railway administration, or as, in case of difference of opinion may be authorized by the Governor-General in Council.

Powers for owner, occupier or local authority to cause additional accommodation works to be made.

13. The Governor-General in Council may require that, within a time to be specified in the requisition, or within such further time as he may appoint in this behalf,

Fences, screens, gates, and bars.

(*a*) boundary-marks or fences be provided or renewed by a railway administration for a railway or any part thereof, and for roads constructed in connection therewith.

(*b*) any works in the nature of a screen near to or adjoining the side of, any public road constructed before the making of a railway be provided or renewed by a railway administration for the purpose of preventing danger to passengers on the road by reason of horses or other animals being frightened by the sight or noise of the rolling-stock moving on the railway ;

(*c*) suitable gates, chains, bars, stiles, or hand-rails be erected or renewed by a railway administration at places where a railway crosses a public road on the level ;

(*d*) persons be employed by a railway administration to open and shut such gates, chains or bars.

B

INDIAN TELEGRAPH ACT, ACT XIII OF 1885.

Sections 16 & 18.

16. (1) If the exercise of the powers mentioned in Section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph-authority shall be permitted to exercise them.

Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under Section 188 of the Indian Penal Code.

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient, or, where all the disputing parties have in writing admitted the amount tendered to be sufficient, or the amount has been determined under sub-section (3), and the District Judge, after giving notice to the parties, and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation, or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph-authority from the person who has received the same.

Removal of trees interrupting telegraphic communication.

18. (1) If any tree standing or lying near a telegraph-line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph-authority, cause the tree to be removed or dealt with in such other way as he deems fit.

(2) When disposing of an application under sub-section (1), the Magistrate, shall, in the case of any tree in existence before telegraph-line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.

C

THE INDIAN WORKS OF DEFENCE ACT, ACT VII OF 1903.

An Act to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions, and for determining the amount of compensation to be made on account of such imposition.

NOTE :—The provisions of this Act are similar to those of the Land Acquisition Act, I of 1894.

D

THE INDIAN ELECTRICITY ACT, ACT IX OF 1910.

Section 57.

Amendment of the Land Acquisition Act, 1894.

57. (1) In section 40, sub-section (1), clause (b), and section 41, sub-section (5), of the Land Acquisition Act, 1894, the term "work" shall be deemed to include electrical energy, supplied, or to be supplied, by means of the work to be constructed.

(2) The Local Government may, if it thinks fit, on the application of any person, not being a Company, desirous of obtaining any land for the purposes of his undertaking, direct that he may acquire such land under the provisions of the Land Acquisition Act, 1894, in the same manner, and on the same conditions, as it might be acquired if the person were a Company.

E

THE INDIAN TRAMWAYS ACT, ACT XI OF 1886.

Sections 6 & 7.

Procedure for making order.

6. The Local Government on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the official Gazette and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorizing the construction of the tramway.

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may make an order accordingly.

(4) Every order authorizing the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any, and that publication shall be conclusive proof that the orders has been made as required by this section.

Contents of order.

7. (1) An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein provided, and shall specify the time within which the tramway shall be commenced, and the time within which it shall be completed and opened for public traffic.

(2) The order may also provide, in manner, consistant with this Act, for all or any of the following, among other matters, that is to say:—

(*a*) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period, elect to be substituted, in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle ; and the limits of time within which, and the terms upon which the local authority may, after the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle ;

(*b*) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purpose ;

F

THE BENGAL MUNICIPAL ACT, ACT No. III OF 1884.

Sections 35 & 36.

35. The Local Government, on the application of the Commissioners at a meeting that any land be acquired for the purposes of this Act, may, on being satisfied that the Commissioners are in a position to pay for such land, either at once or in such instalments as the Local Government may think proper, notify, under the provisions of the Land Acquisition Act, 1870* or any similar Act for the time being in force for the acquisition of land for public purposes, that such land is required for a public purpose and may cause such land to be acquired under the provisions of such Act; and, on payment by the Commissioners of the compensation awarded under such Act, the land shall vest in them for the purposes of this Act.

Land may be taken up under Land Acquisition Act, 1870.

36. The Commissioners shall be bound to pay to the Government the cost of any land which may be acquired for them on their application under the provisions of the last preceding section.

Commissioners to pay cost of such land.

G

THE CALCUTTA MUNICIPAL ACT, 1923.

(BENGAL ACT 3 OF 1923.)

Sections 310, 468, 474, 475 & 476.

310. (1) The Corporation may acquire—(a) any land required for the purpose of opening, widening, extending or otherwise improving any public street, square or garden, or of making any new public street, square or garden, or of making any new public street, square or garden; and

(b) the buildings (if any) standing upon such land.

(2) The Corporation, with the sanction of the Local Government, and after giving due notice of their intention and an opportunity to any objector, who appears within such

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* Act X of 1870. See now Act I of 1894.

period as they may fix, to be heard in this connection, may acquire, in addition to any land and buildings acquired under Sub-section (1), any land outside any proposed street alignment, with the buildings (if any) standing thereupon which the Corporation may, for any of the purposes mentioned in Sub-section (1), including the recoupment of the cost or any portion of the cost incurred for any such purposes, consider it expedient to acquire.

468. The Corporation may acquire any land and buildings, whether situated in Calcutta or not—

(*i*) for the purpose of opening out any congested or unhealthy area or of otherwise improving any portion of Calcutta ; or

(*ii*) for the purpose of erecting sanitary dwellings for the working and poorer classes.

474. Nothing in this Act shall authorize the Corporation to acquire for the purposes of this chapter or of any other Section of this Act any building which is intended solely as a place of public worship.

475. Any land or buildings which the Corporation are authorized by this Act to acquire may be acquired under the provisions of the Land Acquisition Act, 1894 and for that purpose the said Act shall be subject to the amendment that the market-value of any land or building so acquired shall be deemed for the purposes of clause first of Sub-section (1) of Section 23 of the Land Acquisition Act to be the market-value according to the disposition of such land or building at the date of publication of the declaration relating thereto under Section 6 of the Land Acquisition Act :

Provided as follows :—

(1) if within a period of 2 years from the date of the publication of such declaration in respect of any land or building the Collector has not made an award under Section 26 of the said Land Acquisition Act with respect to such land or building the owner of the land or building shall be entitled to receive compensation for the damage suffered by him in consequence of the delay ;

(2) if it be shown that before such declaration was published the owner of the land or building had taken active steps and incurred expenditure to secure a more profitable disposition of the same, further compensation based on his actual loss may be paid to him ;

(3) if the market-value is especially high in consequence of the property being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the

market-value shall be deemed to be the market-value of the land or building if put to ordinary uses ;

(4) if the market-value has been increased by means of any improvements made by the owner or his predecessor in interest within 1 year before the aforesaid declaration was published such increase shall be disregarded unless it be proved that the improvement was made *bona fide* and not in contemplation of proceedings for the acquisition of the land or building being taken under the said Land Acquisition Act.

476. On payment by the Corporation of the compensation awarded under the said Land Acquisition Act, 1894 in respect of any land or buildings and of any other charges incurred in acquiring the said land or buildings the same shall vest in the Corporation.

H

THE CALCUTTA IMPROVEMENT ACT, 1911.

(BENGAL ACT V OF 1911).[1]

(As modified up to 1923).

Sections 68 & 81.

Power to purchase or lease by agreement.

68. The Board may enter into an agreement with any person for the purchase or leasing by the Board from such person of any land which the Board are authorized to acquire or any interest in such land.

Power to dispose of land.

81. (1) The Board may retain, or may let on hire, lease, sell, exchange, or otherwise dispose of, any land vested in or acquired by them under this Act.

(2) Whenever the Board decide to lease or sell any land acquired by them under this Act from any person, they—

(*a*) shall give notice by advertisement in local newspapers ; and

(*b*) shall offer to the said person, or his heirs, executors or administrators, a prior right to take on lease or to purchase such land, at a rate to be fixed by the Board, if the Board consider that such a right

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[1] Local Extent.—This Act (except sections 82 to 86) extends only to the Calcutta Municipality. See Section 1 (3).

can be given without detriment to the carrying out of the purposes of this Act.

(3) If in any case two or more persons claim to exercise a right offered under clause (b) to take on lease or to purchase any land, the right shall be exercisable by the person who agrees to pay the highest sum for the land, not being less than the rate fixed by the Board under that clause, to the exclusion of the others.

I

THE CITY OF BOMBAY IMPROVEMENT ACT, 1898.

Sections 46—50.

46. *Acquisition of Land.*—Subject to the provisions of this Act it shall be lawful for the Board to agree with the owner of any land or of any interest in land needed by the Board for the purposes of this Act or with the owner's any rights, if any have been created by legislative enactment over any street forming part of the land so needed for the purchase of such land or of any interest in such land or for compensating the owners of any such right in respect of any deprivation thereof or interference therewith.

47. (1) Notwithstanding anything contained in the Land Acquisition Act, 1894 (in this and the next succeeding section referred to as the said Act), the said Act shall not, except to the extent set forth in schedule A, apply to the acquisition of land under this Act, but the said Act shall, to the extent set forth in the said schedule, regulate and apply to the acquisition of land otherwise than by agreement and shall for that purpose be deemed to form part of this chapter in the same manner as if enacted in the body hereof, subject to the provisions of this chapter and to the following provisions, namely :—

(*a*) A reference to any section of the said, Act shall be deemed to be a reference to such section as modified by the provisions of this chapter, and the expression land as used in the said Act shall, in addition to the meaning included therein under clause A of Section 3 of the said Act, be deemed for the purposes of this Act to include rights created by legislative enactments over any street, and clause (b) of Section 3 of the said Act shall for the purposes of this Act be read as if the words and parentheses ("including the Crown")

there inserted after the words "includes all persons" and the words "or if he is the owner of any right created by legislative enactments over any street forming part of the land" were added after the words "affecting the land."

(2) In the construction of sub-section (2) of Section 4 of the said Act and the provisions of this Chapter, the provisions of the said sub-section shall for the purposes of this Act be applicable immediately upon the passing of a resolution under Sections 23, 30, 32-B, or 38, and the expression "Local Government" shall be deemed to include the Board, and the words "such locality" shall be deemed to mean "the locality referred to in any such resolution."

(3) In the construction of the sections of the said Act deemed to form part of this chapter, publication of a Declaration under Sections 29, 32, 32-B or 39 shall be deemed to be the publication of a declaration under Section 6 of the said Act:

Provided that the land is acquired under Section 27-A or sub-section (2) of Section 27-B, the date of the Notification under Section 27 or the date of the receipt by the Board of the Written Notice as the case may be shall be deemed to be the date of publication of Declaration under Section 6 of the said Act:

Provided further that the provisions of sub-section (2) of Section 23 of the said Act shall apply when land, other than land forming part of any sanctioned scheme prepared in accordance with the provisions of Secs. 23 and 30 is acquired specifically under this Act for the purpose either of a Police Accommodation Scheme or of a Poorer Classes Accommodation Scheme.

(4) In the construction of Section 50, sub-section (2), of the said Act and the provisions of this chapter the Board shall be deemed to be the local authority or company concerned.

48. (1) For the purpose of this Chapter a Tribunal of Appeal (hereinafter called the Tribunal) shall be constituted as hereinafter mentioned to perform the functions of the Court under the said Act, and, in the construction of the said Act and the provisions of this Chapter, the Tribunal shall be deemed to be the Court, and the award of the Tribunal, or, in the event of disagreement, the award of the majority of the Tribunal, shall be deemed to be award of the Court, and shall, subject to the provisions for appeal hereinafter contained, be final. The President of the Tribunal shall be deemed to be the Judge.

(2) The decision of all questions of law and procedure and costs and apportionment of compensation shall rest solely with the President, and any such question may be tried and decided in the absence of the Assessors if in the opinion of the President their presence is unnecessary, and when any such ques-

tion is so tried and decided the decision of the President shall be deemed to be the decision of the Tribunal.

(3) Such Tribunal shall consist of 3 members, that is to say, of a President and two Assessors. The President and one of the Assessors shall be appointed by Government by notification in. the Bombay Government Gazette ; the other Assessor shall be appointed by the Corporation: Provided that any pesron who is a Trustee under this Act, or who, by reason of the provisions of Section 14, is disqualified to be a Trustee, shall be disqualified to be a Member of the Tribunal.

(4) The President shall be either—

(a) A member of the Judicial branch of the Imperial or Provincial Civil Service ot not less than 10 years' standing, who shall have served as District Judge or held Judicial Office not inferior to that of a First Class Subordinate Judge for at least three years of that period ; or

(b) A Barrister, Advocate or Pleader of not less than 8 years' standing who has practised as an Advocate or Pleader in the Bombay High Court.

(5) Members of the Tribunal shall be appointed for a term of one year and any such Member shall be eligible for re-appointment.

(6) It shall be lawful for Government if they think fit to remove for inability or misbehaviour, or other good and sufficient cause, any Member of the Tribunal.

(7) Upon the occurrence of any vacancy in the Tribunal or during the temporary absence through illness or other unavoidable cause of any Member thereof, Government or the Corporation (as the case may be), whichever of them shall have appointed the Member of the Tribunal whose place shall be vacated shall appoint forthwith a fit person to be a Member (either temporary or permanent) of the Tribunal in lieu of the Member whose place is vacated or who is temporarily absent as aforesaid.

(8) Each member of the Tribunal shall be entitled to such remuneration, either by way of monthly salary or by way of fees, or partly in one way and partly in the other, as Government may from time to time fix.

(9) The remuneration mentioned in sub-section 8 and the cost of any special clerical or other establishment which shall be necessary shall be paid by the Board.

(10) Any award or order of the Tribunal shall be enforced by the Small Cause Court as if it had been a Decree or Order of that Court.

(11) In any case in which the President may grant a certi-

ficate that the case is a fit one for appeal there shall be an appeal to the High Court from the award or any part of the award of the Tribunal.

(12) Subject to the sanction of Government, the President of the Tribunal shall have power—

(a) to appoint such clerks and other officers or servants, as the case may be, necessary for carrying on the business of the Tribunal and to fix their salaries, which shall be paid accordingly by the Board ; and

(b) to make rules for the conduct of the business of the Tribunal provided that such rules are not repugnant to the provisions of the Code of Civil Procedure and such rules shall come into force on receiving the sanction of Government.

(13) The Tribunal shall have power to summon and enforce the attendance of witnesses including parties interested or any of them and to compel the production of documents by the same means (so far as may be in the same manner), as is provided in case of Civil Court under the Code of Civil Procedure.

49. In determining the amount of compensation to be awarded for any land or building acquired under this Act, the following further provisions shall apply :—

(1) The Court shall take into consideration any increase to the value of any other land or building belonging to the person interested likely to accrue from the acquisition of the land or from the acquisition, alteration or demolition of the building.

(2) When any addition to or improvement of the land or building has been made after the date of the publication under Sections 27, 32 or 39 of a notification relating to the land or building, such addition or improvement shall not (unless it was necessary for the maintenance of the building in a proper state of repairs) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereoff be made so as to increase the amount of compensation to be paid for the land or building.

(3) In estimating the market-value of the building at the date of the publication of the declaration relating thereto under Sections 29, 30 or 39 the Court shall have due regard to the nature and the condition of the property and the probable duration of the building in its existing state and to the state of repair thereof and to the provisions of Sub-sections (4), (5) and (6) of this Section.

(4) When the owner of the land or building has, after the passing of this Act and within 24 months preceding the date of the publication of a notification relating to the land or build-

ing under Sections 27, 32 or 39, made a return (Section 155 of the Municipal Act) of the rent of the land or building, the rent of the land or building shall not in any such case, save as the Court may otherwise direct, be deemed to be greater than the rents shown in the latest return so made: Provided that where any addition to or improvement of the land or building has been made after the date of such latest return and previous to the date of the publication of a notification under Sections 27, 32 or 39, relating to the land or building, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement.

(5) If in the opinion of the Court the rental of the land or building has been enhanced by reason of its being used for an illegal purpose, or being over-crowded so as to be dangerous or injurious to the health of the inmates, the rental shall not be deemed to be greater than the rental which would be obtainable if the land or building were used for legal purposes only, or were occupied by such a number of persons only, as it was suitable to accommodate without risk of such over-crowding.

(6) If in the opinion of the Court the building is in a state of defective sanitation, or is not in reasonably good repairs, the amount of compensation shall not exceed the estimated value of the building after being put into a sanitary condition or into reasonably good repairs, less the estimated expense of putting it into such condition of repairs.

(7) If in the opinion of the Court the building being used or intended or likely to be used for human habitation is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials, less the cost of demolition.

50. When the Collector has made an award, under Section 11 of the Land Acquisition Act I of 1894, as applied by this Chapter, he may take possession of the land, which shall thereupon vest absolutely in His Majesty free from all encumbrances, and the Collector shall, upon payment of the costs of the acquisition, make over charge of the land to the Board, and the land shall thereupon vest in the Board, subject to the Board's liability to pay any further costs which may be incurred on account of the acquisition of the land.

J

THE CITY OF BOMBAY MUNICIPAL ACT, 1888.

(As modified up to 1st April 1923).

Sections 87, 90, 91 & 296.

87. The Corporation shall, for the purpose of this Act, have power to acquire and hold moveable and immoveable property, whether within or without the limits of the City.

90. Whenever it is provided by this Act that the Commissioner may acquire, or whenever it is necessary or expedient for any purpose of this Act that the Commissioner shall acquire any immoveable property, such property may be acquired by the Commissioners on behalf of the Corporation by agreement on such terms and at such rates or prices or at rates or prices not exceeding such maxima as shall be approved by the standing Committee, either generally for any class of cases or specially in any particular case.

91. (1) Whenever the Commissioner is unable to acquire any immoveable property under the last preceding Section by agreement, Government may, in their discretion, upon the application of the Commissioner, made with the approval of the Standing Committee, order proceedings to be taken for acquiring the same on behalf of the Corporation, and if such property were land needed for a public purpose within the meaning of the Land Acquisition Act, 1894.

(2) The amount of compensation awarded and all other charges incurred in the acquisition of any such property shall, subject to all other provisions of this Act, be forthwith paid by the Commissioner and thereupon the said property shall vest in the Corporation.

296. (1) The Commissioner may, subject to the provisions of Sections 90, 91 and 92—

(a) acquire any land required for the purpose of opening, widening, extending or otherwise improving any public street or of making any new public street, and, the buildings, if any, standing upon such land ;

(b) acquire in addition to the said land and the buildings, if, any, standing thereupon, or such land, with the buildings, if any, standing thereupon, as it shall seem expedient for the Corporation to acquire outside of the regular line, or of the intended regular line of such street ;

(c) lease, sell or otherwise dispose of any land or building purchased under clause (b).

(2) Any conveyance of land or of a building under clause (c) may compromise such conditions as the Commissioner thinks fit as to the removal of the existing building, the description of new building to be erected, the period within which such new building shall be completed, and other such matters. He shall do so on such terms and at such rates or prices or at rates or prices not exceeding such maxima as shall be approved by the Standing Committee as aforesaid.

(3) Provided that no agreement for the acquisition of any immoveable property under sub-section (1) or (2) shall be valid, if the price to be paid for such property exceeds one thousand Rupees unless and until such agreement has been approved by the Corporation.

K

THE BOMBAY DISTRICT MUNICIPAL ACT, 1901 (BOMBAY ACT 3 OF 1901.)

(As modified by Act 3 of 1920.)

Sections 41 & 160.

41. *Compulsory Acquisition of Land.*—When there is any hindrance to the permanent or temporary acquisition, upon payment, of any land or building required for the purpose of this Act, the Governor in Council may, after obtaining possession of the same for Government under the Land Acquisition Act, 1894, or other existing law, vest such land or building in the Municipality on their paying the compensation awarded, and on their repaying to Government all costs incurred by Government on account of the acquisition.

160. (1) If a dispute arises with respect to any "compensation or damages," which are by this Act directed to be paid, the amount, and if necessary the apportionment of the same, shall be ascertained and determined by a *Panchayat* of 5 persons, of whom two shall be appointed by the Municipality, two by the party to or from whom such "compensation or damages" may be payable or recoverable, and one, who shall be *Sarpanch,* shall be elected by the members already appointed as above.

(2) If either party or both parties fail to appoint members or if the members fail to select a *Sarpanch* within one month

from the date of either party receiving written notice from the other of claim to such "compensation or damages," such members as may be necessary to constitute the *Panchayat* shall be appointed, at the instance of either party, by the District Judge.

(3) In the event of the *Panchayat* not giving a decision within one month from the date of the selection of the *Sarpanch*, or of the appointment by the District Court of such members as may be necessary to constitute the *Panchayat* the matter shall, on application by either party, be determined by the District Court, which shall, in cases in which the compensation is claimed in respect of land, follow, as far as may be, the procedure provided by the Land Acquisition Act, 1894 for the proceeding in matters referred for the determination of the Court:

Provided that—

(a) no application to the Collector for a Reference shall be necessary ; and

(b) the Court shall have full power to give and apportion the costs of all proceedings in any manner it thinks fit.

L

THE MADRAS DISTRICT MUNICIPALITIES ACT, 1920.

(MADRAS ACT 5 OF 1920.)

(Brought into force from 1st October 1920.)

Sections 67, 165, 168 & 343.

67. Any immoveable property which any Municipal authority is authorized by this Act to acquire may be acquired under the provisions of the Land Acquisition Act, 1894, and on payment of the compensation awarded under the said Act in respect of such property and of any other charges incurred in acquiring it the said property shall vest in the Council.

165. (1) The Council may acquire—

(a) any land required for the purpose of opening, widening, extending, or otherwise improving any public street, or of making any new public street, and the buildings, if any, standing upon such land ; and

(b) any land outside the proposed street-alignment with the buildings, if any, standing thereupon :

Provided that in any case in which it is decided to acquire

any land under clause (b) of this Sub-section, the owner of such land may retain it by paying to the Municipal Council an annual sum to be fixed by the Council in that behalf, or a lump sum to be fixed by the Council, not being less than 25 times such annual sum and subject to such conditions as the Council thinks fit as to the removal of the existing building, if any, the description of the new building (if any) to be erected, the period within which the new building (if any) shall be completed, and any other similar matters.

(2) If any sum payable in pursuance of the proviso to sub-section (1) in respect of any land be not duly paid it shall be recoverable in the manner provided by this Act for the Collection of taxes, and, if not recovered, the Chairman may enter upon the land and sell it, with any erections standing thereon, by public auction subject to the conditions, if any, imposed under Sub-section (1) above and may deduct the said sum and the expenses of the same from the proceeds of the sale and shall pay the balance (if any) to the defaulter.

(3) Any sum paid in pursuance of the proviso to sub-section (1) or recovered under Sub-section (2) in respect of any land shall be left out of account in determining the annual value of such land for the purpose of assessing it to the Property Tax.

(4) Any land or building acquired under Sub-section (1), clause (b), may be sold, leased or otherwise disposed of after public advertisement and any conveyance made for that purpose may comprise such conditions as the Council thinks fit as to the removal of the existing building, if any, the description of the new building (if any) to be erected, the period within which the new building (if any) shall be completed, and any other similar matters.

(5) The Council may require any person to whom any land or building is transferred under Sub-section (4) to comply with any conditions comprised in the said conveyance before it places him in possession of the land or building.

168. (1) Where any building or part thereof abutting on a public street is within a street-alignment defined under Section 166, the Chairman may, whenever it is proposed—

(a) to rebuild such building or take it down to an extent exceeding one-half thereof above the ground level, such half to be measured in cubic feet; or

(b) to remove, reconstruct or make any addition to any portion of such building which is within the street-alignment,

in any order which he issues concerning the rebuilding, alteration or repair of such building, require such building to be set back to the street-alignment.

(2) Where any building or any part thereof within the street-alignment falls down or is burnt down, or is, whether by order of the Chairman or otherwise, taken down, or where any private land without any building thereon lies within the street-alignment, the Chairman may forthwith take possession on behalf of the Council of the portion of land within the street-alignment and, if necessary, clear it.

(3) Land acquired under this Section shall be deemed a part of the public street and shall vest in the Municipal Council.

(4) When any building is set back in pursuance of any requisition made under Sub-section (1), or when the Chairman takes possession of any land under Sub-section (2), the Council shall forthwith make full compensation to the owner for any direct damage which he may sustain thereby.

Explanation :—The expression "direct damage" as used in Sub-section (4) with reference to land means the market-value of the land taken and the depreciation, if any, in the ordinary market-value of the rest of the land resulting from the area being reduced in size, but does not include damage to the prospective loss of any particular use to which the owner may allege that he intended to put the land, although such use may be injuriously affected by the reduction of the site.

343. In any case not otherwise expressly provided for in this Act, the Chairman may, with the approval of the Council, pay compensation to any person who sustains damage by reason of the exercise by any Municipal authority, officer or servant of any of the powers vested in them by this Act or any other law, or by any rule, bye-laws, or regulation made under it.

M

THE MADRAS CITY MUNICIPAL ACT, 1919.

(MADRAS ACT 4 OF 1919.)

(As modified up to 24th June 1919.)

Sections 205, 207 & 232.

205. (1) The Commissioner may, subject always to such sanction as may be required under Chapter 4,—

(*a*) Lay out and make new streets ;
(*b*) Construct bridges and sub-ways ;
(*c*) Turn, divert, or, with the special sanction of the Council and the Governor in Council, permanently close any public street or part thereof ;

(*d*) Widen, open, extend or otherwise improve any public street.

(2) Reasonable compensation shall be paid to the owners and occupiers of any land or buildings which are acquired for or affected by any such purposes.

207. (1) The Commissioner may, subject always to such sanction as may be required under Chapter 4, acquire—

(*a*) any land required for the purpose of widening, opening, extending or otherwise improving any public street, or of making any new public street and the buildings, if any, standing upon such land ;

(*b*) any land outside the proposed street-alignment, with the buildings, if any, standing thereupon, which the Council may consider it expedient to acquire.

(2) Any land or building acquired under Sub-section (1), clause (b), may be sold, leased or otherwise disposed of after public advertisement and any conveyance made for that purpose may comprise such conditions as the Standing Committee thinks fit as to the removal of the existing building, if any, the description of the new building (if any) to be erected, the period within which the new building (if any) shall be completed, and any other similar matters.

(3) The Standing Committee may require any person to whom any land or building is transferred under Sub-section (2) to comply with any conditions comprised in the said conveyance before it places him in possession of the land or building.

232. (1) The Council may require any building intended to be erected at the corner of two streets to be rounded off or splayed off to such height and to such extent otherwise as it may determine, and may acquire such portion of the site at the corner as it may consider necessary for public convenience or amenity.

(2) For any land so acquired the Corporation shall pay compensation.

(3) In determining such compensation, allowance shall be made for any benefit accruing to the same premises from the improvement of the streets.

N

THE UNITED PROVINCES MUNICIPALITIES ACT, 1916
(UNITED PROVINCES ACT I OF 1916.)
Sections 117 & 324.

117. Where a board, for the purpose of exercising any power or performing any duty conferred or imposed upon it by or under this or any other enactment, desires the Local Government to acquire on its behalf, permanently or temporarily, any land or any right in respect of land under the provisions of the Land Acquisition Act, 1894 or of other existing law, the Local Government may, at the request of the Board, acquire such land or such right under the aforesaid provisions and, on payment by the Board to the Local Government of the compensation awarded thereunder and of the charges incurred by the Local Government in connection with proceedings, the land or right, as the case may be, shall vest in the Board.

324. (1) Should a dispute arise touching the amount of compensation which the Board is required by this Act to pay, it shall be settled in such manner as the parties may agree, or, in default of agreement, by the Collector, upon application made to him by the Board or the person claiming compensation.

(2) Any decision of the Collector awarding compensation shall be subject to a right of the applicant for compensation to require reference to the District Judge, in accordance with the procedure set forth in Section 18 of the Land Acquisition Act, 1894.

(3) In cases in which compensation is claimed in respect of land, the Collector and the District Judge shall, as far as may be, observe the procedure prescribed by the said Act, for proceedings in respect of compensation for the acquisition of land acquired for public purposes.

O

THE UNITED PROVINCES TOWN IMPROVEMENT ACT.
(UNITED PROVINCES ACT 8 OF 1919.)
(*As modified up to 1922.*)
Sections 56, 57 & 58.

56. *Compulsory Acquisition.*—The Trust may, with the previous sanction of the Local Government, acquire land under

the provisions of the Land Acquisition Act, 1894, as modified by the provisions of this Act, for carrying out any of the purposes of this Act.

57. A Tribunal shall be constituted, as provided in Section 59, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Trust, under the Land Acquisition Act, 1894.

58. For the purpose of acquiring land under the said Act for the Trust,—

(*a*) the Tribunal shall (except for the purpose of Section 54 of that Act) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act ;

(*b*) The said Act shall be subject to the further modifications indicated in the Schedule ;

(*c*) The President of the Tribunal shall have the power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 ; and

(*d*) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894, and shall be final.

P

THE PUNJAB MUNICIPAL ACT, 1911.

(PUNJAB ACT 3 OF 1911.)

(*As modified up to 4th May 1923.*)

Section 58.

58. When any land, whether within or without the limits of a Municipality, is required for the purposes of this Act, the Local government may, at the request of the Committee, proceed to acquire it under the provisions of the Land Acquisition Act, 1894, and on payment by the Committee of the compensation awarded under that Act, and of any other charges incurred in acquiring the land, the land shall vest in the Committee.

Explanation.—When any land is required for a new street or for the improvement of an existing street, the Committee

may proceed to acquire, in addition to the land to be occupied by the street, the land necessary for the sites of the buildings to be erected on both sides of the street, and such land shall be deemed to be required for the purposes of this Act.

Q

BIHAR AND ORISSA MUNICIPAL ACT, 1922.

(BIHAR AND ORISSA ACT 7 OF 1922.)

Section 63.

63. When any land is required for the purpose of this Act or for the recoupment of the cost of carrying out any such purpose, the Local Government may, at the request of the Commissioners at a Meeting, proceed to acquire it under the provisions of the Land Acquisition Act, 1894 ; and on payment by the Commissioners of the compensation awarded under that Act, and of any other charges incurred in acquiring the land, the land shall vest in the Commissioners.

R

BURMA ACT NO. V OF 1920.

AN ACT FOR THE IMPROVEMENT AND EXPANSION OF THE CITY OF RANGOON.

Sections 33 & 34.

Power of Board to purchase and hold moveable and immoveable property.

33. The Board may, for the purposes of this Act, purchase and hold moveable and immoveable property within or without the City.

Power of Board to acquire immoveable property.

34. (1) The Board may, in addition to the provisions contained in Chapter IV, acquire under the Land Acquisition Act, 1894, subject to the modifications set out in Schedule I, in connection with any scheme and any scheme may provide for the acquisition of any land or any right or interest therein, whether attached thereto or not.

(2) The Board may acquire under the Land Acquisition Act, 1894, at any time prior to the completion of the scheme

under sub-seetion (1), in addition to any land comprised in the scheme, any other land which is beneficially or injuriously affected thereby.

(3) The Board may acquire under the Land Acquisition Act, 1894, any easement affecting any immoveable property vested in the Board where such acquisition is necessary for the development of the City;

Provided that where there is any dispute as to the existence of such necessity such dispute shall be referred for decision to the Court as provided in section 30 before the issue of the notice of intention to acquire any such easement.

(4) The word "land" in the Land Acquisition Act, 1894, shall, for the purposes of this Act, be deemed to include all the rights, interests and easement referred to in this section.

S

THE BURMA MUNICIPAL ACT, 1898.

(BURMA ACT 3 OF 1898.)

Sections 41 & 83.

41. Where any land, whether within or beyond the limits of the Municipality, is required by the Committee for the purpose of this Act or for any other object which it is empowered to carry out under any other enactment for the time being in force, the Local Government may, at the request of the Committee, proceed to acquire it under the provisions of the Land Acquisition Act, 1894, and, on payment by the Committee of the compensation awarded under that Act and of the charges incurred by the Local Government in connection with the proceedings, the land shall vest in the Committee.

83. Where any land is required for a new street or for the improvement of an existing street, the Committee may proceed to acquire, in addition to the land to be occupied by the street, the land necessary for the sites of the buildings to be erected on the sides of the street.

PART V.

RULES FRAMED UNDER S. 55 BY THE DIFFERENT GOVERNMENTS.

A.

BENGAL.

Rules issued by the Government of Bengal under section 55 of Act I of 1894, having the force of Law.

As Corrected up to August, 1926.

NOTIFICATION NO. 29T.—R.

The 24th April 1895.—In exercise of the powers conferred by section 55 of the Land Acquisition Act, I of 1894, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to make the following rules in supersession of the rules issued under section 59 of Act X of 1870 and published under notification, dated the 4th November 1889, at pages 898—900, Part I of the *Calcutta Gazette* of the 6th idem :—

1. When any revenue-paying land is acquired under the Land Acquisition Act, 1894 (I of 1894), the proprietor shall, [1] * * * * be relieved of the liability to pay revenue to the extent of the Government demand upon the said land ; and such relief shall have effect in the manner hereinafter described :—

(*a*) in estates in which the instalments of revenue as laid down in the settlement papers are known, it shall take effect from the end of the month immediately preceding that in which possession of the land is taken ; and

(*b*) in estates in which the instalments of revenue are not known, it shall take effect from the "latest day of payment" of arrears of [2]revenue (as determined by the Board of Revenue, Lower Provinces, under

* This rule was substituted for original rule 1 by Government Notification No. 3231 L.A., dated the 3rd September 1907, published at page 1581, Part I of the *Calcutta Gazette* of the 11th idem.

1 In line 3 of rule 1 the words "except as provided in rule 6" have been omitted by Notification No. 8082 L.A., dated 25th October, 1919.

2 In clause (b) of rule 1, the words "latest day of payment of arrears of revenue" have been substituted for "latest day for payment of revenue" by Notification No. 601T.—R dated 13th June 1918.

section 3 of Act XI of 1859) immediately preceding the date on which possession is taken.

2. In such cases the Collector shall, before making an award, ascertain, in accordance with the two next following rules, and record the amount of Government revenue which is to be taken as payable in respect of the acquired portion, and shall, in the event of a reference being made to a Court, furnish the Court, at the time of making the reference, with particulars of the amount of the share so ascertained and recorded.

3. If the land to be acquired be an entire estate or tenure assessed with a specific amount of revenue, the whole of such amount shall be remitted.

4. If the land be not liable for a specific amount of revenue, but be a portion of an estate or tenure which is liable for a specific amount, the proportion of Government revenue to be deemed payable in respect of the land taken shall be ascertained under the following rules:—

1st.—When an estate has, within 20 years next preceding the date of the commencement of proceedings for the acquisition of any land situate therein, been subjected to a detailed settlement, or has formed portion of an estate brought under partition under the Estates Partition Act, VIII (B.C.) of 1876, made after inquiry into and record of the assets of the estate, the Government revenue to be deemed payable in respect of the said land shall bear to the assets of the said land the same proportion as the Government revenue of the whole estate bears to the assets of the whole estate, as shown in the settlement or partition proceedings.

**2nd.*—When there has been no such settlement or partition as aforesaid, or when, although there has been such settlement or partition, the assets of the whole estate cannot, in the opinion of the Commissioner, be accurately ascertained without serious difficulty, then, if the area of the estate is known with accuracy, the amount of Government revenue to be deemed payable in respect of the portion of the land taken shall bear to the Government revenue of the whole estate the same proportion as the area of said portion bears to the area of the whole estate.

3rd.—When the Government revenue deemed payable in respect of the land taken cannot be determined by

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* Substituted by Notification No. 6598 L.A., dated the 3rd September 1917, published at page 1398, Part I of the *Calcutta Gazette* of the 5th idem.

either of the above rules, one-fourth of the net rent (*i.e.*, the gross rental less a deduction of 10 per cent. for the expenses of collection) of the said land shall be taken to be the amount of Government revenue thereon chargeable.

5. In determining the amount of compensation to be awarded, the Collector shall take into consideration the fact that the land acquired is subject to the burden of the payment of Government revenue.

6. [1]* * * *

7. When there is any question whether the land to be acquired is part of a revenue-paying estate, or is revenue-free, the Collector shall decide the matter before making his award, leaving it to the claimants to apply for a reference to the Court if they object to his decision. In case of a reference being applied for, the Collector shall, if he has decided that the land is revenue-free, determine the amount of revenue which would be payable for it in the event of its being held to belong to the revenue-paying estate of which it is alleged to form a part.

8. To enable him to calculate accurately the additional compensation to be given under section 23(2) of the Act, and to keep up fully and clearly his registers of all lands occupied and compensation paid for them, the Collector shall invariably record separately his finding under the first head of section 23(1) of the Act, which concerns the market-value of the land.

9. The procedure laid down as to the payment of the compensation-money in cases of references under section 18 shall apply also to references under section 30 or section 35. The compensation-money, or, if any of the parties are willing to accept payment of their shares and payment to them is admissible, the portion of it which is in dispute and cannot be paid away shall be deposited in Court when the reference is made.

***10.** In giving notice of the award under section 12(2), and tendering payment under section 31(1), to such of the persons interested as were not present personally or by their representatives when the award was made, the officer shall require them to appear personally or by representatives by a certain date, to receive payment of the compensation awarded to them, intimating also that no interest will be allowed to them if they fail to appear. If they do not appear, and do not apply

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[1] Rule 6 has been cancelled by Notification No. 8028 L.A., dated 25th October 1919.

* This rule was substituted for original rule 10 by Government Notification No. 4876L.R., dated 30th November 1896, published in the *Calcutta Gazette* of the 2nd December 1896, Part I, pages 1204-1205.

for a reference to the Civil Court under section 18, the officer shall, after any further endeavour to secure their attendance that may seem desirable, cause the amounts due to be paid into the Treasury as revenue deposits payable to the persons to whom they are respectively due, and vouched for in the accompanying form (marked E). The officer shall also give notice to the payees of such deposits, specifying the Treasury in which the deposits have been made. When the payees ultimately claim payment of sums placed in deposit, the amounts will be paid to them in the same manner as ordinary revenue deposits. The officed should, as far as possible, arrange to make the payments due in or near the village to which the payees belong, in order that the number of undisbursed sums to be placed in deposit on account of non-attendance may be reduced to a minimum. Whenever payment is claimed through a representative, whether before or after deposit of the amount awarded, such representative must show legal authority for receiving the compensation on behalf of his principal.

E.

NAME OF WORK FOR WHICH LAND HAS BEEN ACQUIRED————

To the Officer in charge of..................................*Treasury.*

Please receive for transfer to credit of Revenue Deposits the sum of Rs.———on account of compensation for land taken up for the above purpose, payable as detailed below :—

Serial No. in award statement No.	Names of persons to whom due.	Area of land.	Amount payable to each.	REMARKS.
		Acres.	Rs. A.P.	
	Total ...			

Date 19 . *Land Acquisition Officer.*

Received the above amount and credited to Revenue Deposits.

Treasury Officer.

NOTE.—This form should be used when the amounts of compensation due are sent to Treasury in the absence of proprietors who have failed to present themselves for payment.

E.

NAME OF WORK FOR WHICH LAND HAS BEEN ACQUIRED ————

To the Officer in charge of——————*Treasury.*

Please receive for transfer to credit of Revenue Deposits the sum o Rs.———on account of compensation for land taken up for the above purpose, payable as detailed below :—

Serial No in award statement No.	Names of persons to whom due.	Area of land.	Amount payable to each.	REMARKS.
		Acres.	Rs. A.P.	
	Total ...			

Date 19 . *Land Acquisition Officer.*

Received the above amount and credited to Revenue Deposits.

Treasury Officer.

NOTE.—This form should be used when the amounts of compensation due are sent to Treasury in the absence of proprietors who have failed to present themselves for payment.

RULES FRAMED BY THE GOVERNMENT OF BOMBAY UNDER THE LAND ACQUISITION ACT I OF 1894.

B.

BOMBAY.

GOVERNMENT RESOLUTION

No. 6188, DATED 25TH JULY 1894.

The Land Acquisition Act X of 1870, having been repealed by Act I of 1894, which came into force from 1st March 1894, His Excellency the Governor in Council desires to invite the attention of officers who may be concerned in the acquisition of land for public purposes to the necessity for care in conforming their procedure to the terms and requirements of the new Act, more particularly in regard to the points noted below:—

Section 3, clause (*b*).

(1) Claims to easements on, as well as to interests in, the property to be acquired must now be considered.

Section 3, clause (*f*).

(2) Land may now be taken up when required for village sites subject to the condition that it is the custom of the district for Government to provide land for the purpose. Proposals to take up land under this provision should be accompanied by a report showing that the condition is fulfilled with a view to the issue of the necessary notification.

Section 3, clause (*g*).

(3) Claims to represent minors and other persons unable to act for themselves must now be scrutinised with reference to the proviso to the definition of "Persons entitled to act."

Section 5.

(4) In this section the words "or other Chief Revenue Officer of the district" have been added to indicate that disputes as to damages on entry are to be decided by the Collector of the district, not by any officer specially appointed to perform the functions of the Collector under the Act.

Section 6 (proviso).

(5) The addition of the words "wholly or partly" before the words "out of public revenues," makes it permissible to apply the Act

to the acquisition of land for suitable objects at the joint cost of public revenues or the funds of local authorities and of private benefactors, as well as when the whole cost is to be defrayed from public revenues or the funds of local authorities.

Section 9, clause (2), and Section 10 to 15.

(6) The correctness of the measurements made under section 8, and the apportionment of the compensation among the persons interested, are now added to the matters to be dealt with in the Collector's award. His enquiry is no longer to be summary, and authority is given to require statements of claims to be made in writing. Except as is noted further on his award is now made final, and immediate notice of it must be given to any claimant not present when it is made. Having regard to the greater formality of the enquiry and the possible finality of the award, it will probably be found advisable to require statements of claims to be made in or reduced to writing in all cases in future.

Section 9, clause (4), and Section 45.

(7) Certain conditions are laid down which must be carefully attended to when services of notices by post may be necessary.

Section 10.

(8) Not less than 15 days' notice must now be allowed when any person is called upon to furnish a statement of other persons interested in the land to be acquired.

Section 17, clause (2).

(9) Provision is made for immediate appropriation of land acquired for Railway purposes in certain emergencies, without waiting for the expiration of 15 days from publication of the notice mentioned in section 9 sub-section (1), subject, however, to reasonable notice to occupants of buildings who may be required to vacate, and compensation must be offered in all cases in which possession is taken in anticipation of the award, for damages arising from sudden dispossession and not excluded by section 24, as well as for standing crops and trees.

Sections 18 and 30.

(10) No reference to the Civil Court need now be made except on written application, made within the time laid down, from a person who has not accepted the award, failing which the award becomes final. It is, however, open to the Collector to refer disputes as to apportionment to the Court for settlement.

Section 19.

(11) When a reference is made, care must be taken to comply with the provisions of section 19, as to the information to be supplied, among which attention may be drawn to those mentioned in clause (2) as to particulars of all notices served upon and statements in writing made or delivered by the parties.

(12) The phrase "market-value" remains undefined but may be taken to mean the price which the owner might be expected to obtain for his property with full opportunities of time and occasion, such as might be held to be reasonable under all the circumstances of the case. The new Act differs from the old in that it requires the compensation to be fixed with reference to the market-value of the land, at the date of the declaration, instead of at the date of the award, and consequently the consideration of a new item, to wit, (sixthly) the damage (if any) *bona fide* arising from any diminution in the profits of occupation during the period between the declaration and the Collector's entry into possession. Item "secondly" under section 23 must apparently be read subject to the condition that compensation for standing crops and trees has not already been paid separately under section 17 (3).

Sections 15, 23 and 24.

(13) In item (seventhly) a provision excluding from consideration any outlay on, or improvement or disposal of, the land *without the sanction of the Collector* after publication of the declaration under section 6, is substituted for the somewhat vague provision in the former Act excluding outlay or improvements commenced or effected with the intention of enhancing the compensation.

Section 24.

(14) The Court has now a discretion in awarding costs which may be used as a check on extravagant or speculative claims or negligence in making or stating them. On the other hand the effect of section 28 must be borne in mind. By making unduly low awards, the Collector may now render himself liable to pay interest on any excess amount awarded by the Court, as well as the costs of the reference.

Sections 27 and 28.

(15) To save accrual of claims for interest the amount of the Collector's award must now be deposited in Court when for any reason there is no person able and willing to receive it ; and provision is made for receipt by any person interested of the sum awarded, without prejudice, if it be received under protest as to its amount, to the right of the recipient to demand a reference or to the right of other persons interested to recover from him, and for investment of the amount in certain cases when it has been deposited in Court. A discretionary power subject to the sanction of Government, of settling otherwise than by a money payment with persons having a limited interest in the land even when it is taken up under the Act, is also reserved.

Sections 31, 32 and 38.

(16) The new Act makes it clear that land taken up for Railway Companies, for which under contract with the Secretary of State, Government is expressly bound to provide land, is to be treated as taken up on behalf of Government, and not under the provisions relating to the acquisition of land for Companies.

Sections 43 and 44.

(17) The taking of possession is now the stage of the proceedings up to which it remains open to Government to withdraw from the acquisition instead of the making of an award or reference as under the old Act.

Section 48.

(18) In cases of severance, it is now open to the owner of any building, etc., who may have expressed a desire that the whole should be taken up, to withdraw or modify his demand at any time before an award has been made, and to Government to acquire the whole, in cases in which extravagant claims to compensation for severance are set up.

Section 48.

(19) Local authorities or Companies at whose cost any land may be taken up under the Act are now entitled to be heard and to adduce evidence for the purpose of determining the amount of compensation, but cannot demand a reference.

Section 50.

Notes—"It is necessary also to bear in mind that the rules and instructions under the Land Acquisition Act of 1870 printed in the compilation of rules in force in the Revenue Department have not and never had the force of law and are not therefore saved by section 2, clause (2). They may still be used as a general guide, but care must be taken to follow them no further than may be strictly consistent with the provisions of the new Act, and instructions should be applied for in regard to any new questions that may arise." *See Bombay Government Resolution No. 6168 dated 25th July 1894.*

The Rules framed by the Government of Bombay under section 59 of the Land Acquisition Act X of 1870, published in the Bombay Gazette of 13th March 1873:—

1. Whenever it shall appear to the Collector desirable that the Government revenue or haks of any kind shall be remitted in payment or part-payment of the compensation to be awarded for land taken under this Act, he shall estimate the value of such revenue or haks, and deduct it from the estimated compensation to be awarded to the owner of the land.

2. If the land has been surveyed and assessed to the land revenue under the provisions of Act I of 1865, or when it bears an assessment according to existing practice, the value of Government claims on such land shall be calculated at not less than

twenty-five times the survey assessment: but houses, trees, crops, wells, and improvements shall be estimated separately on the best information available to the Collector.

3. When the land to be taken under this Act has not been so surveyed and assessed under Act I of 1865, or does not bear an assessment according to existing practice, the Collector shall proceed to assess it on the best information he can procure, and the value of the Government claims on such lands shall be calculated at not less than twenty-five times the assessment fixed by the Collector, with the approval of Revenue Commissioner.

4. When making an award of compensation to be given under section 42 of Act X of 1870, the Collector or Court shall record separately the compensation to be granted under the first clause of section 24 of the Act, which concerns the market-value of the land and the portion of compensation to be granted under the 2nd, and 4th clauses of that section.

5. The procedure required for a reference under section 15 shall be applicable to a reference under section 43.

6. When the amount of compensation to be awarded under section 43 (for temporary occupation of land) has been fixed, and there is a dispute as to the division of the amount among the persons interested, the Collector shall refer such dispute to the Court for decision, and the procedure prescribed by section 39 shall be applicable to such reference.

7. Any informality in the proceedings of the Collector or Court under this Act shall not vitiate the award, unless the interests of any party or parties are injuriously affected thereby.

RULES FRAMED BY THE GOVERNMENT OF THE UNITED PROVINCES.

C.

UNITED PROVINCES.

Rules for guidance in awarding compensation for lands acquired under Act I of 1894.

1. *House.*—The rental of houses shall be calculated, when possible, on the actuals of the three years preceding compensation: and the market-value shall ordinarily be *eight* times the average of such rental. Where no guide to the rental exists, the calculation shall be based upon an estimate of the cost of material and rebuilding, the former being deducted if made over to the proprietor. For the land occupied by the building compensation shall be given under Rule 13.

2. *Wells and tanks not used for agricultural purposes.*—The cost of reconstruction shall ordinarily be tendered as compensation under section 11 of the Act, provided:—

(1) that if the well or tank has fallen into disuse, compensation shall be allowed on the present value of the material only;

(2) that if the well or tank is in bad repair, deduction shall be made on this account.

3. *Wells or tanks used for agricultural purposes.*—The cost of constructing a similar new well or tank shall, with the same provisos as in rule 2, be tendered as compensation; but—

(1) if the construction of a new well or tank diminishes the culturable area of any part of a cultivator's holding, compensation shall (if no compensation has been awarded under these rules for the lands occupied by the old well or tank) be tendered for such lands under the rules for awarding compensation to landlords and tenants for land;

(2) if the irrigated area of the holding is likely to be lessened in any way, compensation shall be tendered to the landlord by reducing his revenue by the difference between an irrigated and unirrigated revenue-rate on the land, and to the cultivator under Rule 14.

4. *Trees.*—The market-value of timber, and eight times the annual value of fruit in the case of fruit trees shall be tendered in compensation: provided that the owners may be given the option of cutting down trees without compensation for timber.

5. If any tenant possesses by local custom any right in the timber or produce of any tree, the award shall be apportioned according to the custom regulating the distribution of profits or the price of the timber.

6. *Crops.*—In the case of ripe crops the owners shall be required to cut and remove them, and no compensation will be necessary. If it is necessary to cut an unripe crop, its value will be calculated at the estimated value of similar ripe crops in similar neighbouring land.

7. *Landholder's interests,—A Cultivated land.*—(1) The recorded rental of the jamabandi shall be ascertained for that portion of the appropriated area which is occupied by tenants: and if the land-owner object that the recorded rent is less than rent actually paid, such objection shall not be heard.

(2) The annual value of that portion of the area appropriated which, from being *Sir* or other cause, is cultivated by the proprietor shall be calculated at the recorded rent for similar neighbouring lands with similar advantages paid by tenants-at-will. If *Sir* land is cultivated by sub-tenants, compensation shall be based on the rents recorded for such land.

(3) In the case of lands for which rents are paid in kind, if no money rates for similar neighbouring lands with similar advantages exist, the annual value shall be estimated at the mean market-value of the landlord's share of the average recorded out-turn during the past three years.

8. *Culturable land.*—(1) The rental of "cultivable land recently thrown out of cultivation" (meaning by that term land lying out of cultivation for a term less than three years) shall be estimated at not less than one-third and not more than two-thirds of rent of dry cultivated land of similar capacity, according as such land is ordinarily left waste for a longer or shorter term.

(2) The profits of cultivable land yielding assets (as from *dhak* jungle, grass, etc ,) or the piscary from tanks, shall be estimated at the average receipts of three years.

9. The revenue borne by the appropriated area, if not ascertainable from the record-of-rights shall be calculated on the basis of the assessment rates on the different classes of soil contained in the area ; that on *gauhan* land, for instance, being calculated at *gauhan* rates, that on *bhur* land at *bhur* rates. If no separate rates were assessed or classes of soils, the rate of

the whole revenue on the total cultivated area of the *mahal* or *patti* may be taken allowance in all cases being made according as the land taken up is above or below the average, and care being taken to exclude from the calculation any part of the revenue which is due to sayar assets or waste land.

The difference between the revenue, *plus* local and patwari's rates and 12 per cent. cesses and the rental thus calculated, is the landlord's net profits.

10. The profits of land exempt from Government revenue, if in such land the proprietary and grantee right be distinct, and if settlement has been made between the proprietor and grantee, shall be calculated in the mode prescribed under Rule 7 for the calculation of land paying revenue to Government. If the proprietor and grantee are the same, and in all cases in permanently settled districts, the declared rental of the lands recorded in such mahals, checked by the recorded rents of similar land held by the same class of tenants in adjacent villages, after deduction of cesses, and in mahals paying revenue, in the permanently settled districts after deduction of cesses and revenue, shall form the basis of calculation.

11. The number of year's purchase of the profits to be allowed in the case of land assessed to land-revenue or of which the land-revenue has been assigned, or redeemed, must be determined by the Collector on a consideration of the market-value and local custom as to sale of such land ; but in the case of lands paying revenue to Government not more than 16 years' purchase. and in the cases of lands of which the land-revenue has been assigned or redeemed not more than 25 years' purchase, shall be paid without a reference to the Commissioner under Rule 17. The provisions of this rule together with those of Rule 9, clause 2, are applicable to land subject to malikana appropriated for railway purposes.

In the case of land held under a perpetual lease at a quit rent, the division of the compensation assessed by the Collector between the proprietor and the lessee shall *ordinarily* be made in the ratio of the profits they respectively derive from the land in question. But where, for any special reason, their respective interests in the land cannot equitably be estimated in this ratio, the division shall be made in such manner as may appear to the Collector to be just and reasonable. Where a lease of revenue-paying land purports to be in perpetuity, regard must be had to the extent to which the lessee's interest may be affected by the provisions of section 29 of the North-Western Provinces Rent Act, 1881.

12. In the case of cultivable land lying waste beyond the term of three years, or yielding no assets, or having no appreciable value owing to proximity to a town or village or other-

wise, and not taken into calculation under the above rules, a price may be offered, not exceeding two rupees per acre. In the case of fruit and other grove lands, compensation should be offered not exceeding Rs. 2 per acre *plus* the market-value of the timber, and in the case of fruit trees eight times the annual value of the fruit, under Rule 4 above.

13. In the case of barren land yielding no assets, or having no appreciable value from proximity to a town or village or otherwise, a nominal price shall be offered, not exceeding one rupee per acre. In the case of such land, or of land under Rule 12, situate within, or in the vicinity of a town or village, compensation shall be based, if ascertainable, on the market-value of similar land. Should no selling price be ascertainable, compensation shall be estimated at eight times the annual value of any fees customarily paid to the proprietors by occupants of persons for the use and occupation of the land on which such houses are erected. In the absence of sales or fees from such land, a nominal price shall be paid, not exceeding one rupee per 100 square yards.

14. *Interests of tenants.*—The compensation tendered to tenants with rights of occupancy, or in the case of *sir* lands in consideration of the cultivating rights of a proprietor, shall not be less than three years' purchase, nor without a reference to the Commissioner, more than six of rental determined under Rule 7 (*1*) as the basis of compensation. In proportion as the rent, approches to a rack-rent, the number of years' purchase tendered in compensation shall be diminished. In the case of ex-proprietary tenants, 20 per cent. shall be added to the rental on which the compensation to tenants with rights of occupancy holding similar land is calculated.

A larger number of years' purchase should be waraded in cases where the tenant's position is much injured by the absence of other available land in the vicinity than in cases where other land is easily obtainable. To tenants-at-will, besides the compensation prescribed under Rule 6, one year's rent shall be awarded.

15. The compensation allowed to tenants at fixed rates in the permanently-settled districts shall be calculated at the market rate of such rights *plus* 15 per cent. thereon authorised by section 23 (*2*), provided that no more than twelve years' purchase shall be paid without previous reference to the Commissioner.

16. The officer determining the amount of compensation awarded shall record clearly in every case for which no fixed rate of compensation is awarded the grounds on which his award is based.

17. Cases for which rules here laid down do not provide or in which the compensation provided appears, for and special reasons, inadequate or excessive, shall be forwarded for orders to the Commissioner of the Division who if he agrees with the Collector in recommending a departure from the rules, shall refer the case for instructions to the Board of Revenue.

18. Nothing in these rules shall be construed to override any of the provisions of section 23 of Act I of 1894.

19. Care should be taken in every instance of permanent appropriation to add 15 per cent. to the ascertained market-value of the land under section 23 (2). Arrangements should also be made for the payment of interest from the date of occupation to the date of payment of compensation, or to the date fixed for payment of compensation, whether the occupation is permanent or temporary.

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